

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-7041

In The
United States Court of Appeals
For The Second Circuit

IRANIAN SHIPPING LINES, S.A., A Corporation,
Cross-Claimant-Appellant.

vs.

PETER MORAITES, et al.,
Impleaded Defendants-Appellees.

(Con't)

APPENDIX FOR APPELLANT
Volume II, pp. 201a - End

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IRANIAN SHIPPING LINES, S. A.,
a corporation,

Plaintiff,

-against-

PETER MORAITES; WALTER N. JONES; JOHN
PENSEC; MIDLAND BANK & TRUST COMPANY;
GUARANTY BANK & TRUST COMPANY; ROBERT
DE COTIIS; NASSER AFSHAR; YVONNE AFSHAR;
EDWARD SWINDURNE; MILTON PILALAS; JAMES
KATSOURIS; GEORGE L. MANTA; FRANK J.
MANTA (a/k/a MARK FRANK MANTA); STEPHEN
A. MANTA (a/k/a STEVE MANTA); LEO J. MANTA
and FRANK J. MANTA as CO-EXECUTORS of the
ESTATE OF JOHN L. MANTA; J. L. MANTA, INC.;
MANTA VIN-COR STEEL CORPORATION; MANTA
INVESTMENTS, INC.; CHRIST KARAROTIAS;
SEYMOUR F. SIMON; CHRIST AVALIOTIS; BASIL
VLAVIANOS; ROBERT KREIS; LEVIN, KREIS,
RUSKIN & GYORY; SOUTH SHIPPING COMPANY,
S.A.; IRAN LINE, S.A.; JAN C. UITERWYK;
JAN C. UITERWYK CO., INC.; ARYA SHIPPING
LINES, S.A.; AMBER MARITIME CORPORATION;
AHMET CHAFIK; HASK BABAYAN and NORTON
LILLY & CO., INC.,

Defendants.

-----X

RUDOLPH V. ALOSIO,

Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A.; HASK BABAYAN;
CARGO AND SHIPPING, S.A.; THE MIDLAND BANK &
TRUST COMPANY, PARAMUS, NEW JERSEY; GUARANTY
BANK & TRUST COMPANY, CHICAGO, ILLINOIS;
YVONNE AFSHAR; NASSER AFSHAR; DENNIS AFSHAR;
MASSOUME KHALADJ AFSHAR; MANSUR AFSHAR;
MANOCHIK AFSHAR; JOHN L. MANTA; GEORGE L.
MANTA; CHRIST KARAFOTIAS; FRANK J. MANTA
(a/k/a MARK FRANK MANTA); LEO J. MANTA;
STEPHEN J. MANTA; J.L. MANTA, INC., an
Illinois corporation, and MANTA-VIN COR
PORATION, an Illinois Corporation,

Defendants.

-----X

ATLANTIC STEAMERS SUPPLY CO., INC. OF
PENNSYLVANIA, ATLANTIC STEAMERS SUPPLY CO.,
INC., MARITIME FOOD CORPORATION, LEE &
PALMER, INC. and MARINE MAINTENANCE COMPANY,

Intervening Plaintiffs,

-against-

IRANIAN SHIPPING LINES, S.A., HASK BABAYAN,
LILIAN BABAYAN, CARGO AND SHIPPING, S.A.,
MAHMOUD NAZEMI, MIDLAND BANK & TRUST COMPANY,
GUARANTY BANK & TRUST COMPANY, BANK MARKEZI
IRAN, NASSER AFSHAR, JOHN L. MANTA, GEORGE L.
MANTA, CHRIST KARAFOTIAS, FRANK J. MANTA
(a/k/a MARK FRANK MANTA), STEPHEN A. MANTA,
J.L. MANTA, INC., MANTA VIN-COR CORPORATION,
PAUL J. FRANGOULIS, ELIAS FRANGOULIS, JOHN
KLIAFAS, ACHILLES KLIAFAS, DEMETRIOS G.
GOUZOULIS, and MARITIME AND MERCANTILE
AGENCIES, LTD.,

Second Defendants.

BAY RIDGE OPERATING CO., INC.,

Second Intervening Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., HASK BABAYAN,
LILIAN BABAYAN, CARGO AND SHIPPING, S.A.,
MAHMOUD NAZEMI, MIDLAND BANK & TRUST COMPANY
GUARANTY BANK & TRUST COMPANY, BANK MARKEZI,
IRAN, NASSER AFSHAR, JOHN L. MANTA, GEORGE I.
MANTA, CHRIST KARAFOTIAS, FRANK J. MANTA,
(a/k/a MARK FRANK MANTA), STEPHEN A. MANTA,
J.L. MANTA, INC., MANTA VIN-COR CORPORATION,
PAUL J. FRANGOULIS, ELIAS FRANGOULIS, JOHN
KLIAFAS, ACHILLES KLIAFAS, DEMETRIOS G.
GOUZOULIS, and MARITIME AND MERCANTILE
AGENCIES, LTD.,

Second Defendants.

GULF OIL TRADING COMPANY,

Third Intervening Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., HASK BABAYAN,
LILIAN BABAYAN, CARGO AND SHIPPING, S.A.,
MAHMOUD NAZEMI, BANK MARKEZI IRAN, PAUL J.
FRANGOULIS, ELIAS FRANGOULIS, JOHN KLIAFAS,
ACHILLES KLIAFAS, DEMETRIOS G. GOUZOULIS
and MARITIME AND MERCANTILE AGENCIES, LTD.,

Third Defendants.

-----X

- - - - -x

RUDOLPH V. ALOSIO,

Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Defendants.

- - - - -x

ATLANTIC STEAMERS SUPPLY CO., INC. OF
PENNSYLVANIA, et al.,

First Intervening Plaintiffs,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants.

- - - - -x

BAY RIDGE OPERATING CO., INC.,

Second Intervening Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants.

- - - - -x

GULF OIL TRADING COMPANY,

Third Intervening Plaintiff,

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It denies each and every allegation contained in paragraphs A, B.

FOR A FIRST DEFENSE

12. The complaint fails to state a claim against the defendant, Arya National Shipping Lines, S.A., upon which relief can be granted.

FOR A SECOND DEFENSE

13. The rights of action, if any, set forth in this complaint did not accrue within four years next before the commencement of this action.

WHEREFORE, defendant, Arya National Shipping Lines, S.A. demands judgment dismissing the complaint, together with the costs and disbursements of this action.

Dated: *May 30, 1973*

KIRLIN, CAMPBELL & KEATING
By:

HALDVIN EINARSON

a member of the firm
Attorneys for Defendant,
Arya National Shipping Lines, S.A.

Office & Post Office Address:

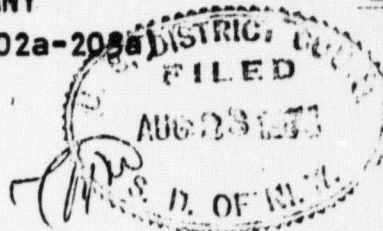
120 Broadway
New York, New York 10005
212/732-5520

ANSWER OF GUARANTY BANK AND TRUST COMPANY

202a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(PP. 202a-202b)



----- x
IRANIAN SHIPPING LINES, S.A., :
a corporation, :

Plaintiff, :

72 Civ. 1392

(Hon. Murray Grufein)

-against- :

PETER MORAITES, et. al. :

ANSWER OF GUARANTY BANK
& TRUST COMPANY

Defendants. :
----- x

AS TO COUNT ONE

Defendant, Guaranty Bank & Trust Company ("Guaranty"),
by its attorney, Howard L. Jacobs, P.C., answers the Complaint
upon information and belief, as follows:

1. Denies each and every allegation contained in Paragraph
"1" of the Complaint, except admits plaintiff seeks to invoke
jurisdiction of this Court on the basis of the statutory provision
referred to in said Paragraph "1".

2. Denies the allegations in Paragraph "2" of the Complaint
insofar as they relate to Guaranty, but denies knowledge or
information sufficient to form a belief as to the truth of the
allegations as they may relate to the other defendants.

3. Denies knowledge or information sufficient to form a
belief as to the truth of the allegations contained in Paragraphs
"3" through "11" and "14" through "25" of the Complaint.

4. Admits Guaranty is a corporation organized and existing
under the laws of the State of Illinois and denies knowledge or
information sufficient to form a belief as to the truth of the
other allegations contained in Paragraph "12".

5. Denies that NASSER, pursuant to a written appointment by
Guaranty, has at all times, since July, 1966, been the agent and

attorney in fact for Guaranty and denies knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph "13".

6. Denies every allegation of Paragraphs "26" through "33" of the Complaint insofar as they relate to Guaranty and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they may relate to other defendants.

AS TO COUNT TWO

7. Denies every allegation of Paragraphs "34" (except as admitted in Paragraph "4" above) through "39" of the Complaint insofar as they relate to Guaranty and denies it has knowledge or information sufficient to form a belief as to the truth of the allegations as they may relate to other defendants.

FOR A FIRST DEFENSE

8. The Complaint fails to state a claim against defendant, Guaranty, upon which relief can be granted.

FOR A SECOND DEFENSE

9. The rights of action, if any, set forth in the Complaint is barred by the Statute of Limitations.

WHEREFORE, defendant Guaranty, demands judgment dismissing the Complaint, together with the costs and disbursements of this action.

HOWARD L. JACOBS, P.C.

By Howard L. Jacobs
A Member of the Firm
Attorney for Guaranty Bank &
Trust Company

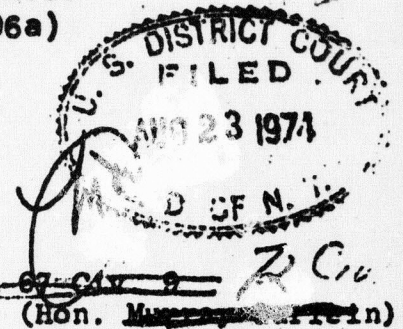
401 Broadway
New York, New York 10013
432-3710

~~EXHIBIT~~ 204a

ANSWER TO GUARANTY BANK & TRUST COMPANY TO AMENDED
CROSS CLAIM (pp. 204a-206a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
RUDOLPH V. ALOSIO, :
 :
Plaintiff, :
 :
-against- :
 :
IRANIAN SHIPPING LINES, S.A., et. al., :
 :
Defendants. :
----- x



ANSWER OF GUARANTY
BANK & TRUST COMPANY
TO AMENDED CROSS-
CLAIM

----- x
AS TO COUNT ONE

Defendant Guaranty Bank & Trust Company ("Guaranty"), by its attorney, Howard L. Jacobs, P.C., answers the amended cross-claim ("claim"), upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "1" through "7" of the claim, except admit Guaranty is a corporation organized and existing under the laws of the State of Illinois.

2. Denies the allegations in Paragraph "8" of the claim insofar as they relate to Guaranty, but denies knowledge or information sufficient to form a belief as to the truth of the allegations as they may relate to other defendants.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "9" through "20" of the claim.

4. Denies each and every allegation contained in Paragraph "21" of the claim, except admits that cross-claimant seeks to invoke the jurisdiction of this Court on the basis of the statutory provisions referred to in Paragraph "21".

5. Denies the allegations in Paragraphs "22" through "28" of the claim insofar as they relate to Guaranty, but denies knowledge or information sufficient to form a belief as to the truth of the allegations as they may relate to other defendants.

NTG

AS TO COUNT TWO

6. Denies every allegation of Paragraphs "29" (except as admitted in Paragraph "1" above), "31", "32" and "36" through "45" of the claim insofar as they relate to Guaranty, but denies knowledge or information sufficient to form a belief as to the truth of the allegations as they may relate to other defendants.

7. Denies each and every allegation contained in Paragraph "30" of the claim, except admits that cross-claimant seeks to invoke the jurisdiction of this Court on the basis of the statutory provisions referred to in Paragraph "30".

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs "33" through "35" of the claim.

AS TO COUNT THREE

9. Denies every allegation of Paragraphs "46" through (51) (except as admitted in Paragraph "1" above) of the Complaint insofar as they relate to Guaranty, but denies knowledge or information sufficient to form a belief as to the truth of the allegations as they may relate to other defendants.

FOR A FIRST DEFENSE

10. The claim fails to state a claim against the defendant Guaranty, upon which relief can be granted.

FOR A SECOND DEFENSE

11. The rights of action, if any, set forth in this claim did not accrue within the time limits of the Statute of Limitation.

WHEREFORE, defendant Guaranty Bank & Trust Company demands judgment dismissing the amended cross-claim, together with

206a

the costs and disbursements of this action.

Dated: August 22, 1974.

HOWARD L. JACOBS, P.C.

By Howard L. Jacobs

A Member of the Firm
Attorneys for Defendant
Guaranty Bank & Trust Company
401 Broadway
New York, New York 10013
431-3710

TO: KISSAM & HALPIN, ESQS.
Attorneys for Cross-Claimant
120 Broadway
New York, New York 10005

REQUEST TO ADMIT

(pp. 207a-219a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

00 00 00 00 00 00 00 00 00 00 00 00 00 00 00 00 00 00

IRANIAN SHIPPING LINES, S.A.,
a corporation,

Cross-Claimant,

VS.

PETER MORAITES, et al.,

Impleaded Defendants."

.. .. .

PLEASE TAKE NOTICE that cross-claimant Iranian Shipping Lines, S.A. is requested, pursuant to Rule 36 FRCP, to admit the following, namely that:

1. Exhibit 1 annexed hereto is a true, complete and correct copy of the official Persian text of Articles 1 through 220 of the Iranian Commercial Code of 1932 as in full force and effect at all times between the years 1932 and at least March 15, 1969. (Said Code, as so in effect, is hereinafter referred to as "ICC".)

2. Defendant "Iranian Shipping Lines S.A." (herein called "ISL") was organized or purportedly organized as an Iranian "sherkat sahami", translatable to the French "société anonyme" denoted by the suffix "S.A." in its corporate name, and equivalent to a corporation, for which the term "joint stock company" may also be used, in the year 1961, with its head office in Tehran.

3. (a) In consequence of the foregoing, defendant ISL and the rights, duties, powers, and liabilities, if any, of its incorporators, promoters, subscribers, shareholders, directors and

creditors were until at least March 15, 1969, governed by and subject to the applicable provisions of said Articles 1 through 220 of the ICC.

(b) All acts, events, occurrences and omissions involving, relating to or otherwise affecting ISL or the other persons mentioned in 3(a) above transpiring during at least the years 1961 through 1968 are likewise governed and subject, and are not affected by any of the 1969 or other ICC amendments.

4. Exhibit A to Exhibit 2 annexed hereto (said Exhibit 2 being a copy of a supplemental affidavit of H. Sotoudeh, also known as Hassan Sotoudeh Tehrani and herein called "Sotoudeh", sworn to April 20, 1972, herein called the "Supplemental Sotoudeh Affidavit") is a true, correct and complete English translation of said Articles 1 through 220 of the ICC, the Persian text of which is annexed hereto as Exhibit 1.

5. (a) Exhibit 3 annexed hereto is an official Iranian Government translation into English of ICC Articles 20, 34, 38, 42, 48, 51, 53, 55, 58, 61, 82, 83, 87, 90, 116, 201, 213 and 220. Said translation derives its official status as such because certified to by an Official Translator of the Iranian Ministry of Justice, whose status as such and signature are duly certified in said Exhibit 3 by the agency of the Iranian Government empowered to issue such certifications, namely the Iranian Ministry of Justice whose certifications is legalized therein by the Iranian Ministry of Foreign Affairs.

(b) The said official translation into English of said eighteen Articles contained in Exhibit 3 hereto is (except for the

omission therein of the words "will" and "within" in Articles 82 and 87, which omissions are immaterial errors in copying) identical to the English translation of the same eighteen Articles contained in Exhibit A to said Exhibit 2, an ICC English translation issued by the United States Embassy in Tehran and certified to by Sotoudeh.

(c) The English translation of ICC Articles 1 through 220 constituting Exhibit A of Exhibit 2 annexed hereto, i.e., the Supplemental Sotoudeh Affidavit, is likewise an official Iranian Government translation of Exhibit 1 annexed hereto (in addition to being a translation covered by the Principal Sotoudeh Affidavit, Exhibit 2 annexed hereto, itself) by virtue of the certification at the foot of said Exhibit A made by the same Official Translator whose status as such and signature are certified to by the Iranian Ministry of Justice, with legalization of the certificate of such Ministry by the Iranian Ministry of Foreign Affairs, in said Exhibit 3 annexed hereto.

6. (a) Exhibit B to Exhibit 2 (i.e., the Supplemental Sotoudeh Affidavit) annexed hereto is a true copy of the "Statutes" of ISL as executed on June 2, 1962 and filed in 1962 with the appropriate Iranian government agency, namely the Companies' Registration Office in Tehran, Tehran being the designated location of ISL's head office.

(b) Said Statutes, herein called the "Statutes", were ISL's governing instrument and constitute its Articles or Memorandum of Association and the substantial equivalent of a New York corporation's Certificate of Incorporation and By-Laws combined.

(c) The signatures "John L. Manta" and "Capt. Philip Spanos" appearing on the last page of the Statutes, were actually

signed by Nicholas Spanos.

(d) The signatures "John L. Manta" and "Capt. Philip Spanos" appearing on the last page of the Statutes, were signed by Nicholas Spanos, purportedly pursuant to Powers of Attorney given to said Nicholas Spanos so that he could act for said John L. Manta and Capt. Philip Spanos in connection with the corporate organization or re-organization of ISL in June, 1962.

(e) At or prior to the time of his execution of the Statutes, Nicholas Spanos had read an English Translation of the Iranian Commercial Code.

(f) At or prior to the time of his execution of the Statutes, Nicholas Spanos had consulted with Iranian counsel in Iran relative to the organization or re-organization of ISL. *Attorney from*

(g) Neither John L. Manta nor any member of his family was present with Nicholas C. Spanos at the time said Spanos consulted with Iranian counsel, or executed the Statutes, in or prior to June, 1962.

(h) Nicholas Spanos was, in 1962, and still is, a lawyer, having been admitted to the Bar of the State of California.

7. (a) Exhibit C to Exhibit 2 annexed hereto is a true copy of five declarations made in New York by Nicholas C. Spanos and Hask Babayan, ISL's two Co-Managing Directors and covering payment for shares issued by ISL, dated December 23, 1964, representing payment for 14, 2, 46, 96, and 42 shares, respectively, thus totaling in all the 200 issued shares of capital stock of ISL.

(b) Said five declarations refer to the same 200 shares as are contemplated in paragraph 5 of ISL's Statutes, Exhibit B

to said Exhibit 2 annexed hereto.

(c) Each of said 200 shares had a required nominal or par value of 50,000 Rials.

(d) Said par or nominal value was not paid in compliance with the ICC, upon any of said 200 shares or any other shares of ISL.

(e) Neither said Exhibit C to said Exhibit 2 hereto, nor any other declaration or proof under ICC Article 50 regarding payment of the par or nominal value of ISL shares was ever filed or registered at the Companies' Registration Office in Tehran or any other Registration Office.

8. (a) ISL issued in 1964 and 1965 to the order of John L. Manta its promissory notes substantially in the form of Exhibits D and E to Exhibit 2 annexed hereto in the aggregate principal amount of \$826,000 (Said ISL promissory notes are herein collectively called the "Soufteh's".)

(b) The consideration for the issuance of the Soufteh's to John L. Manta was transfer to ISL of title to the three Iranian-flag vessels called the "KASHAN", "HAMADAN" and "SHIRAZ".

9. (a) Exhibit 4 annexed hereto (herein called the "Principal Sotoudeh Affidavit") is a copy of the affidavit sworn to April 20, 1972, by Sotoudeh.

(b) Sotoudeh has no interest, direct or indirect, in the subject matter or the outcome of this litigation.

(c) From 1950 to 1967 Sotoudeh was Professor of Commercial Law at the University of Tehran.

(d) At the time the Principal Sotoudeh Affidavit was executed, Sotoudeh was (i) duly admitted to practice as an attorney at law before all Courts in Iran and (ii) the author of a four volume Persian work entitled "Commercial Law", including company law as laid down in ICC Articles 1 through 220, which work was the only full treatise published upon its subject-matter in Iran.

(e) Sotoudeh was, on said date, April 20, 1972, and still is, a recognized expert upon Iranian civil law and commercial law, including Iranian corporate law.

10. Exhibit 4 annexed hereto (the Principal Sotoudeh Affidavit) contains the following, among other, correct statements, interpretations or conclusions of or with respect to Iranian law or Iranian legal records, to wit:

(a) Legal rights, duties, powers and liabilities of or relating to an Iranian corporation were, between 1932 and 1969, and now continue to be governed by the Iranian Commercial Code of 1932 ("ICC").

(b) The ICC was revised effective March 15, 1969, and corporations then existing were afforded three years thereafter to comply with its new provisions. The Iranian Commercial Code as so revised in 1969 is not applicable to rights, duties, powers and liabilities fixed, accrued or otherwise existing prior to the said 1969 revision; but said matters continue to be governed by the ICC provisions set forth in Exhibit A to Exhibit 2 annexed hereto. Each of the foregoing statements is correct.

(c) As stated in paragraph 12 of the Principal Sotoudeh Affidavit, ISL was a "merchant" under the ICC.

(d) The conclusions set forth in paragraphs 13, 14, 15, 16 and 22 of the said Affidavit are correct.

(e) In reference to paragraph 18 of said Affidavit, it is correct that under the ICC a promoter, shareholder or director of an Iranian corporation who (i) causes or permits to be made a false or inaccurate valuation or appraisal of such corporation's capital or (ii) fails to disclose such corporation's defective capitalization (assuming for this purpose, without conceding, that it is in fact defective) to third parties with whom such person deals in relation to such corporation or its business thereby becomes personally liable to such parties

(f) In reference to paragraph 16 of said Affidavit, it is a fact that Iranian law did not permit, during the years from 1932 through at least 1968, either (i) the existence at any time of authorized but unissued shares of capital stock or (ii) the conduct or transaction of any business in corporate form before the requirements of the laws and regulations cited in said paragraph 16 were satisfied.

(g) It is also a fact during the same period no such conduct or transaction was permitted by Iranian law prior to the satisfaction of the requirements of ICC Article 50 as contained in Exhibit 2 annexed hereto.

(h) During at least the years 1961 through 1968 Iranian law required all paid-in capital to be received and recorded as and expressed in terms of the par or nominal value of issued shares. It neither authorized nor recognized as capital any other shareholder advances or contributions, either in cash or in kind.

(i) Nicholas Spanos never advised any member of the Manta family of said requirement of Iranian Law.

(j) In reference to paragraphs 17 and 25, of said Affidavit

(A) it is correct that the transfer of the "SHIRAZ", "HAMADAN" and "KASHAN" to ISL in 1964 and 1965 did not, under Iranian law, constitute any addition to capital or valid payment for any of its shares; and

(B) Nicholas Spanos never advised any member of the Manta family of such fact.

(k) The principles of liability of directors of an Iranian corporation under the ICC by reason of certain actions or omissions therein referred to are correctly set out in paragraphs 28, 30, 31, 32, 33, 35, and 43 of said Affidavit.

(l) The duties, responsibilities and liabilities of shareholders and directors of an Iranian corporation in respect or by reason of acts, events or omissions occurring at any time in the years 1961 through at least 1968 under ICC Articles 1 through 220 as set out in Exhibit A to Exhibit 2 annexed hereto are not expunged, rescinded, limited, lessened, diminished or qualified, nor are the rights privileges or immunities of such shareholders or directors as therein set out enhanced or enlarged either by the Iranian Constitution, or by any other enactment, statute, code, law, regulation, or legal doctrine or rule other than any applicable Iranian statutes of limitations (also known as "prescription").

(m) Paragraphs 34 and 35 of said Affidavit correctly set out the liabilities of a shareholder of a purported Iranian corporation under the ICC for the debts of such corporation in the

situations described in said paragraphs 34 and 35.

(n) Each of the statements in paragraphs 39 and 44 of said Affidavit is correct.

(o) It is correct that, as stated in paragraph 40 of said Affidavit, the last board of directors of ISL (consisting in all five directors) as registered with the Companies' Registration office in Tehran, is composed of:

Nick C. Spanos

John L. Manta

Christ Karafotias

Hask Babayan

Amir Aslan Afshar

(p) The statements in paragraphs 46 and 47 of said Affidavit are correct.

11. (a) The only minutes of ISL shareholders' meetings ever filed with the Tehran Companies' Registration Office for the period from 1961 through 1966 are those described in paragraphs 48 of the Principal Sotoudeh Affidavit.

(b) Under the ICC, such meeting can have no validity nor can it result in valid action unless the minutes thereof are so filed.

12. Nick C. Spanos ("Spanos") became purported shareholder and Co-Managing Director of ISL in 1962 and his status as such never changed.

13. John L. Manta and George had, between some time in 1964 and at least June 30, 1966, a substantial interest, direct or indirect, in

- (i) The same vessels "KASHAN",
"HAMADAN" and "SHIRAZ";
- (ii) ISL; and
- (iii) Icarian.

14. During 1964 and 1965 John L. and George Manta had substantial interests, direct or indirect, in PSS and Lloyd, which two corporations, at the time such interests existed, owned said three vessels and transferred title thereto (or caused it to be transferred) to ISL.

15. (a) During the year 1964 and continuously thereafter until at least December 31, 1968, Spanos held Class A shares, 1 through 96 of ISL's 200 purportedly issued shares of both classes.

(b) A substantial portion of the shares held by Spanos were purported to be held by him in a fiduciary capacity for others, including, directly or indirectly, John L. and George Manta and their respective spouses and children.

16. (a) During 1964, 1965 and 1966 defendants J. L. Manta, Inc. and Manta Vin-Cor Steel Corporation paid funds to or for account of ISL, and debited said outgoing funds to the respective accounts of John L. and George Manta.

(b) Defendants J. L. Manta, Inc. and Manta Vin-Cor Steel Corporation never had any written agreements with ISL.

(c) Defendants J. L. Manta, Inc. and Manta Vin-Cor Steel Corporation were never shareholders or directors of ISL.

17. (a) When the ISL offices in New York were closed, all its files were taken either to the apartment of a Mrs. Pearson or to Nicholas Spanos' sister's house, at the direction of said Nicholas Spanos.

(b) The Mrs. Pearson indicated was a former secretary of Nicholas Spanos whom he had caused to be employed by ISL.

(c) Spanos' sister referred to above is Bebe Spanos Ikaris one of the original plaintiffs in the Chicago action filed against certain of the Manta defendants and others.

(d) Thereafter, said Nicholas Spanos caused the ISL files which had been taken from the ISL offices in New York to be removed to Kansas City.

(e) Nicholas Spanos has been in possession or control of all the files removed from ISL's New York offices at the time of its closing, to date.

18. (a) From approximately March, 1965 to approximately May, 1966, ISL had or conducted 17 sailings or voyages, involving three owned vessels and a member of chartered vessels.

(b) Gross freight receipts from said 17 voyages approximated \$6,200,000.

(c) Cargo & Shipping S.A. acknowledged having received \$328,000 from ISL according to a certified statement of Cargo & Shipping S.A. which Nicholas Spanos saw.

(d) In addition to monies paid to Cargo & Shipping S.A., ISL also had other expenses including, but not limited to the cost of crews, bunkers, other agents, and charter hires.

(e) On ISL's owned vessels, the expenses, not including bunkers, ran about \$700.00 per day.

(f) The expenses for charter hire would amount to \$45,000 or \$50,000 per month.

(g) Office overhead was also an expense of ISL.

(h) Other expenses of ISL included insurance, port charges and the cost of stevedoring.

(i) Every one of ISL's 17 voyages operated at a loss.

(j) The loss on the Sistina was approximately \$84,000.00.

(k) The \$6,200,000 approximate gross income of ISL did not cover all the expenses of operating the vessels on ISL's 17 voyages.

(l) The dollar loss to ISL was approximately \$500,000 as the result of its 17 voyages, that is, that ISL's operating expenses were about \$6,700,000 against gross income of about \$6,200,000.

(m) Nicholas Spanos calculated the dollar loss to ISL at approximately \$500,000 as the result of its 17 voyages, that is, that ISL's operating expenses were about \$6,700,000 against \$6,200,000

19. (a) According to Hask Babayan, who was in charge of ISL's principal office in Iran, notwithstanding that ISL was an Iranian flag line, and notwithstanding assurances that ISL would get certain priorities and privileges in the discharge of ISL's vessels, when it came time to discharge Iranian government cargo, namely wheat, it was necessary to pay bribes to certain people to expedite the discharge of the cargo.

(b) Notwithstanding the payment of such extra inducements, the discharge of wheat from ISL's vessels in Iranian ports was slower by far than the discharge of wheat from any other vessel in the Persian Gulf.

(c) The delay on the discharge of the wheat carried by ISL's vessels was solely attributable to Mr. Babayan and Cargo & Shipping S.A.

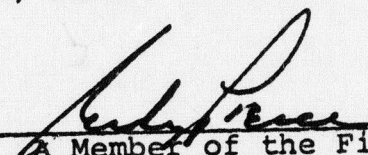
(d) ISL suffered losses amounting to hundreds of thousands

of dollars on the carriage of Iranian Government wheat.

PLEASE TAKE FURTHER NOTICE that pursuant to the terms of the affidavit of Sirius C. Cook, sworn to and served on July 30, 1970, and filed herein, August 6, 1970, paragraphs 6(b), and Exhibit A to said Affidavit and the provisions of FRCP Rule 44.1, the undersigned will offer said two Affidavits of Dr. H. Sotoudeh sworn to April 20, 1972, the Exhibits thereto, and all of the other Exhibits annexed hereto in evidence in this case. All of said Exhibits are being served herewith annexed to a separate back.

DATED: New York, New York
May 28, 1976

BOOTH, LIPTON & LIPTON

By 

A Member of the Firm
Attorneys for the Manta Defendants
292 Madison Avenue
New York, New York 10017

TO: Clerk of the Court
United States District Court
Southern District of New York
Foley Square
New York, New York

Jonathan W. Lubell, Esq.
Cohn, Glickstein, Lurie, Ostrin & Lubell
1370 Avenue of the Americas
New York, New York 10019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
RUDOLPH V. ALOSIO, :

Plaintiff, :

-against- :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :

-----X
:
ATLANTIC STEAMERS SUPPLY CO., INC. :
OF PENNSYLVANIA, et al., :

First Intervening Plaintiffs, :

-against- :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :

(and three other cases) :

-----X
:
EMPIRE OF IRAN)
CITY OF TEHRAN)
EMBASSY OF THE UNITED STATES OF AMERICA)

SS:

AFFIDAVIT OF
DR. H. SOTOUDEH

HASSAN SOTOUDEH TEHRANI, being duly sworn, deposes and says :

1. I am an attorney at law duly admitted to practice before all courts in Tehran, Iran.

I am the senior partner of the firm known as "Law Office of Dr. Sotoudeh" located at 98 Rasht Avenue, Tehran Iran.

I make this affidavit at the request of Healy & Baillie, attorneys for the First, Second and Third Intervening Plaintiffs in the captioned action, for such use in said action as said attorneys may see

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17. I have no interest, either direct or indirect, in the subject-matter of the captioned action.

2. I was born in 1907 at Tehran, Iran. Along with my private practice of law, I was a full Professor of Commercial Law (including Corporation Law) at the Faculty of Law of Tehran University from 1950 until 1967, the date of my retirement from that post.

3. Having received my primary and secondary school education in Iran, I then graduated from the Tehran College of Political Sciences. I continued my education in France where I attended the Faculty of Law of Paris University and the Ecole Libre des Sciences Politiques. I received the Licence en Droit (equivalent to the LL.B.) in 1933 and during the same year, the Diploma of the Ecole Libre des Sciences Politiques. In that same year I entered the Graduate Department of the Faculty of Law of Paris University. In 1936 I completed the requirements for the Doctorate of Law degree (Doctorat d'Etat).

4. I believe I am qualified to render the legal opinions herein expressed not only narrowly from the standpoint of Iranian internal law, but also from the standpoint of comparative law, particularly of Iranian corporation law against the background of the entire Civil Law system, particularly the French and Belgian corporation laws, upon which Iranian law in this area is closely patterned.

5. I attended a large number of International Conferences. In 1963 I was invited by the International Academy for Comparative Law in Paris to act as an expert in Commercial Law at sessions for the Academy, and to assist in preparing the program for the General Congress of the said Academy. In 1967 and 1970 I made a study on joint stock companies (corporations) for the Istituto di Diritto Comparato of the Università Commerciale Luigi

Iranian Branch.

6. My law firm in Tehran specializes in judicial, business and financial legal consultations generally, in the formation and registration of companies, and in trademarks and patents. Many corporations having foreign participation were formed by my office and I am their legal advisor. My clients are, in general, corporations.

7. I was from 1946 to 1967 a member of the Iranian Commissions for the revision of its Commercial Code, including its corporate law provisions, and for the revision of the trademark and patent laws, and as Professor of Commercial Law I contributed substantially to the recent revision of all of said laws.

8. I have published the following principal works :

In French :

- (1) "L'Evolution Economique de l'Iran et ses Problèmes"
- Paris 1936.
- (2) In collaboration with my former partner, Maître Raphaël Aghababian, "Législation Iranienne Actuelle Intéressant les Etrangers" - Paris 1939.
- (3) In collaboration with Maître Raphaël Aghababian and Professor Adl, I helped to prepare Volume II of "Législation Iranienne Actuelle" which includes a French translation of the Iranian Civil Code - Paris 1951.

In Persian :

- (4) "General History of Diplomacy" - Tehran 1946.
- (5) "General History of Diplomacy", Vol. I - Tehran 1947.
- (6) "General History of Diplomacy", Vol. II - Tehran 1950.
- (7) "Maritime and Air Law" - Tehran 1965.
- (8) "Commercial Law", Vol. I - Tehran 1967.

Commercial Law", Vol. II - Tehran 1968.

(10) "Commercial Law", Vol. III - Tehran 1969.

(11) "Commercial Law", Vol. IV - Tehran 1971.

9. I have had extensive private practice in connection with the organization and financing of Iranian corporations. I have concentrated to a major extent in this field since practicing from 1938 to 1959 in association with Maître Raphaël Aghababian, a leading jurist. Since 1959, when I formed my own law firm, I have been legal advisor to more than one hundred foreign corporations in their Iranian legal problems, including B.F. Goodrich Co., Allied Chemical Corporation, Texaco, Mobil Oil, E. R. Squibb & Son, and Procter & Gamble.

10. Unlike the Anglo-American "common law" system, and like the Continental European "civil law" system, the primary sources of law are the Codes and learned treatises. Case law (jurisprudence), since Iran, like Continental Europe, does not have the doctrine of stare decisis, i.e., treatment of judicial precedent as binding, is of secondary importance. Moreover, unlike the Anglo-American system, our Courts do not write elaborate analytical opinions nor discuss prior case law. Our Court decisions are based upon a very formal and standard pattern, similar to the French. Authoritative treatises and the interpretative opinions of jurisconsults such as myself carry far greater weight where a codal provision seem obscure.

Annexed as Exhibit A to this affidavit is a true copy of an English translation of the Iranian Commercial Code of 1932, Articles 1 through 220, containing all the provisions of that Code relevant to the subject-matter of this affidavit. For the present purpose, the Articles thereof that are of primary importance are 20(a), 34, 38-42, 48-51, 53-55, 58, 61, 82, 83, 87, 90, 92, 116, 201, 213 and 220. This Code, so reflected in Exhibit A annexed hereto, is sometimes herein, for convenient

Effective date of the ICC (under Art. 600 thereof) was the Persian date 1st Khordad 1311, equivalent to May 22, 1932.) It was first amended in 1969 as to corporations formed thereafter. Corporations in existence in 1969 were required to conform to the amended Commercial Code of Iran within three years. Until so conformed, such corporations were and are subject to the provisions of the 1932 ICC. Since the ICC corporation provisions were not revised until March 15, 1969 (Persian date 24 Esfand 1347), and since I understand that the opinions herein expressed are intended to be submitted to this Court only in respect of various periods prior to the end of 1969, I do not consider that any of the revisions of the ICC effective following that date, as mentioned above, are in any way relevant for purposes of this affidavit. I should note in passing, however, that the Commercial Code of Iran, as revised in 1969 and as now in effect, has, particularly in the area of proof of payment of capital by the promoters of corporations and the subscribers to their shares, been made very much stricter to avoid certain abuses, so that were said new provisions applicable in this action, which they are not, the liabilities of ISL's promoters, shareholders and directors as hereinafter discussed would be stricter and greater rather than less. I have in mind precisely the type of abuses which, on the facts to the extent I know of them, were committed in connection with the defendant Iranian Shipping Lines, S.A. (herein called "ISL"), a purported Iranian corporation registered as such in 1962. Under the ICC translation annexed as Exhibit A, ISL would be called a "joint stock company" or, in its Persian original, a "sherkat sahami". The full name of defendant ISL in Persian is "Sherkat Sahami Khutoot Keshtirani Iran". A true copy of ISL's "Statutes" (i.e., its combined Articles of Association — or "charter" — and By-Laws, as registered in the Companies' Registration Office in Tehran, is annexed hereto as Exhibit B.

Belgian and French commercial laws, of which corporation law is a branch, there is a special legal classification of persons called "merchants" (commerçants). Such classification, which may apply either to natural persons or to companies generally (by "companies" I include corporations, general partnerships, limited partnerships, limited liability companies and the other trading entities described in ICC Art. 20) has certain legal consequences, as hereafter indicated.

12. Under ICC Arts. 6 and 13, reference is made to accounting books and records that must be maintained by any "merchant". ISL was unquestionably a "merchant" within the meaning of those provisions. Under paragraph 2, Art. 2 of the ICC, transportation operations are commercial; under ICC Art. 21, a joint-stock company (the equivalent of an American "corporation", an English "limited company" and a French "société anonyme") is one formed for commercial purposes; under Art. 583 of the ICC, all trading companies mentioned in the ICC have juridical personality; and under ICC Art. 588, a juridical person can be the subject or object of all of the rights and assume all of the obligations which natural persons may legally do.

13. ICC Art. 38 lays down as a prerequisite to the commencement of separate corporate existence, among other things,

- (i) payment of the necessary subscription commitment for the shares of stock to be issued, and
- (ii) actual payment of at least one-third of the capital represented by such shares in cash, except that property may be delivered under Art. 39 in exchange for shares issued for other than cash, but in such case the property must be delivered in full.

That is to say, the value attributed to such property for purposes of issuance of the shares must not only be a true and fair value, but must be actually delivered to the corporation free of claims by third persons, encumbrances, partial ownership by others, or other title defects.

... foregoing conditions, among others, are met
... Iranian corporation such as ISL was held out to be, cannot be
deemed as validly formed or as having a separate existence as a corporation
with limited liability.

15. (a) With reference to ICC Arts. 41 and 42, unless the formalities of Art. 41 are completed in full, that is to say, a valuation of the proposed non-cash contribution to an Iranian corporation's capital, two successive shareholders' meetings validly held, at which an affirmative two-third vote is cast etc., no such non-cash contribution can be considered as validly made; and consequently, any such contribution even if actually made to the corporation, may not under any circumstances be deemed as a part of the corporation's statutorily required capital.

(b) Some of the legal consequences that flow from the foregoing are that even if a non-cash contribution to capital was in fact made, but without conforming to the requirements of Art. 41, and such non-cash contribution was made at the time of formation of the corporation, the corporation has no valid inception. If such an irregular contribution is made after valid commencement of the corporation's existence, that is to say, assuming that at least one-third of its registered capital was paid in cash, then the principal consequence is that the irregular non-cash contribution is, as indicated above, not deemed a portion of the corporation's capital for any purpose.

16. (a) Under ICC Art. 197, in the first month of formation of every company a summary of memorandum of company and its enclosures must be published in conformity with regulations of the Ministry of Justice.

(b) Under Art. 4 of the Regulation of the Ministry of Justice dated 13th Ordibehesht, 1311 (3rd May, 1932) the following documents must be attached to the application for registration of joint stock companies :

- (ii) Certified copy of the Articles of Association.
- (iii) A written statement signed by an authorized director of the corporation stating the subscription of the entire registered capital and the actual payment of one-third of it at least.
- (iv) Certified copy of the resolution of the general meeting of shareholders in the cases covered by ICC Arts. 40, 41 and 44.

(c) Under ICC Art. 34, until the amount of the shares, registered or bearer, has been fully paid, the amount paid up must be stated on the share certificate itself. The company is, moreover, compelled on all deeds, bills, publications, advertisements and other documents, printed or written, for which it is responsible, to state the amount of its capital in shares, and the amount of the said capital that has actually been paid.

Under ICC Art. 201, on all deeds, invoices, announcements, publications and other documents (printed or written) issued by the companies mentioned in the present law, with the exception of cooperative societies, the amount of the company's capital must be expressly stated. When the company's capital is not fully paid the amount paid up must be expressly stated.

Under the second paragraph of ICC Art. 220, every company mentioned in said Code, and every foreign company bound to register by the Companies' Registration Act ratified in Khordad 1310, must in all its deeds, invoices, announcements and publications state the number under which they have been registered in Iran.

Unlike American corporate laws, the ICC does not permit the existence of authorized, but unissued, shares of capital. As noted above, the capital must be subscribed in full for valid corporate existence.

17. (a) I am informed by Healy & Baillie and I assume for purposes of this affidavit, that in the case of ISL, it received purported

Iranian-flag vessels, one named "SHIRAZ" in 1964, and the other two of them named respectively "KASHAN" and "HAMADAN" in 1965, that is to say, long after the purported formation of ISL.

(b) I am likewise informed and assume, that during the years 1964 and 1965, ISL promissory notes were issued to an American promoter, director and shareholder of ISL, one John L. Manta, in the U.S. dollar equivalent of \$ 826,000.00, which amount, I understand, represented the aggregate valuation put by said promoter and his co-promoters on the said three vessels.

(c) Based upon the ICC and upon all other applicable Iranian law, and assuming the foregoing facts, I am of the opinion that no portion of the value of these three vessels can be taken as representing "capital" in ISL in any sense or for any purpose.

(d) This opinion is based not only upon the non-compliance, a matter of public record in Iran, of the promoters with the aforecited non-cash capital contribution provisions of ICC Art. 41, but also upon the fact that from both the legal and business point of view, where an asset such as these ships is transferred to a corporation in exchange for promissory notes of that corporation of exactly equivalent value, then the effect upon the corporation's net worth, and hence upon its capital (taken either in a legal or a financial sense) is zero.

18. Where fraud, deceit or wrongful non-disclosure (either complete or partial) is practiced by a promoter, shareholder or director of an Iranian corporation, such as, in the case of ISL, failure (which I shall, for purposes of this affidavit, deem to have occurred) to disclose its defective capitalization, each such person becomes personally liable to the third parties with whom he so deals for damages. In other words, such a person

is liable for causing or permitting to be made or designated a false or inaccurate valuation or appraisal of the corporation's capital. See the last paragraph of ICC Art. 83.

Promoter or subscriber to corporate shares of who has not paid (or who has only defectively paid) for his share or shares, and who deals with a third party without disclosing that fact (thus impliedly warranting that the corporation is properly organized and capitalized) is liable to criminal penalties for fraud under Art. 230 of the Iranian Penal Code. See ICC Arts. 90, 91 and 92.

20. The same civil and penal consequences mentioned above attach to such subscriber, shareholder or director, whether he has himself made false assurances, express or implied, as to payment of capital, whether orally or in writing, or has himself made the implied misrepresentations to third parties, or whether, by contrast, he has caused or permitted a third party to do so, either on behalf or for the benefit of the former.

21. In this case, as the official registration records kept by the Registrar of Companies in Tehran show, said John L. Manta and Christ Karafotias were both shareholders and directors of ISL, in the case of said Karafotias since May 31, 1965, John L. Manta having already been an ISL director previously. Although the aforesaid official records indicate that the said two persons, in addition to being directors of ISL were, in 1965 and 1966, were each the holder of but one of ISL's shares, if they in fact failed to disclose to third parties with whom dealings were transacted in the name of ISL the facts as to its defective formation and capitalization as hereinabove and hereinafter mentioned, then each of them would be liable personally to such third party or parties, including unpaid creditors of ISL.

22. Iranian law as in effect from 1932 up to 1969, and since, does not permit a corporation or its promoters to satisfy the statutory capital requirements except by actual payment of cash, specifically set aside as

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as such, or, alternatively, by the delivery of any other than cash upon the conditions aforementioned. The one exception to the requirement of payment in cash is duly appraised and ratified non-cash property, and that exception appears in ICC Art. 41. In my opinion, said article would not permit, even if its formalities were observed, property delivered to a corporation to be treated as part of capital where the consideration for the shares was personal services or the making of loans to the corporation, or, a fortiori, an undertaking to render services or make loans at some future date.

23. Annexed hereto as Exhibit C are copies of five declarations, dated December 23, 1964, of purported payment of capital into ISL, which declarations were not filed with the Office of Registrar of Companies in Tehran. (Had these declarations been true, they should have, of course, been filed under the ICC.) A diligent search of all of the records and entries in said Office fails to disclose any evidence of payment of capital, either in cash or in kind, into ISL, at any time, other than the initial declaration, filed in 1962, which declaration is contradictory to the minutes referred to in paragraph 48(a) of this Affidavit, covering all of ISL's 200 shares.

24. Assuming (a matter of which I have no personal knowledge, and can express no opinion) that any part of said five declarations annexed as Exhibit C were not true, then, under ICC Art. 83 and Art. 91, each of the following persons, namely, the two managing directors who executed them, and

each other director of ISL who caused or permitted the false statement to be made, and each of the shareholders of ISL, whether or not directors, who thereby may have received any legal or beneficial interest in ISL shares without payment as represented in Exhibit C, would be jointly and severally liable to third-party creditors of ISL in damages.

was made hereinabove to the issuance of \$826,000.00

... amount in ISL promissory notes to the order of John L. Manta.

Although the official Companies' Registrar's records in Tehran do not disclose the existence of any such loans or promissory notes, I have been furnished by Messrs. Healy & Baillie for this purpose, with copies of two notes which I understand form a part of the said \$826,000.00 in notes payable to John L. Manta. Annexed hereto as Exhibits D and E are copies of the notes so furnished to me. By reason of ICC Art. 53 and the fact that there was no officially recorded general shareholders' meeting ratifying the issuance of said notes to a director of ISL such as John L. Manta, such notes, in my opinion, are void ab initio. The consequence of such invalidity is, under both the ICC and the basic principles of the Iranian law of obligations, that the transaction must be deemed reversed, that is to say: upon the facts assumed in paragraph 17 above, the notes are void.

26. Under the general principles of the Iranian law of obligations (E.g., Civil Code Arts. 62 and 63) as well as the ICC, each of the directors of ISL either knew or should have known that, for the reasons mentioned above (always assuming the correctness of the facts mentioned in paragraph 17), the non-observance of the rule of Art. 53 of ICC in the acquisition of said three vessels. In my opinion, it flows inevitably from this premise that such directors would each be jointly and severally liable to all third parties, including unpaid creditors of ISL, to whom they may have represent-

ed that ISL owned any of these said vessels, up to the full amount of damages such third parties may have suffered in reliance upon any such affirmative misrepresentations or upon any failure by such directors to disclose such absence of valid title to the vessels.

27. A further consequence of the invalidity of the ISL notes to the order of said John L. Manta in the aggregate amount of \$826,000.00, of course no interest would accrue to him as such. Consider in view of the fact that the purported loan transaction evidenced by said notes was void ab initio.

28. In further consequence of the above, where a director does personally make a loan to a corporation such as ISL without observance of the formalities of ICC Art. 53, and the borrower (ISL) repays such loan in whole or in part, in case of the borrower company's insolvency then the lender-director is personally liable to third-party creditors of the borrower corporation occasioned by such loan repayment to him without observance of ICC Art. 53 at the inception of the transaction.

29. I have also been asked to state my opinion as to the legal consequences of the failure (assuming there was a failure, as to which I have no personal knowledge) of a director of an Iranian "merchant, such as ISL, doing business in corporate form, to keep semi-annual balance sheets of such "corporation" to be drawn up under ICC Arts. 54, 55 and 58.

30. (a) Under ICC Art. 51, the responsibility of the directors of the company is that of an attorney (agent) towards his principal, and according to Art. 61 of the ICC : "the directors are responsible, in conformity with the general rules, to the company or to third persons for any

infringement of the prescription of this law and for any fault they may have been guilty of during their management."

(b) Thus, if the non-fulfillment of their obligations in the matter of causing balance sheets to be drawn up caused any damage to shareholders or creditors, the directors are liable therefor towards shareholders and creditors.

31. One of the legal consequences of the failure of Iranian corporate directors, such as the directors of ISL, to call a meeting in case of

... company's capital stock under ICC Arts. 58 and 59 ... (assuming there was such a loss, as to which matter I have no personal knowledge) is that the "corporation" is no longer in conformity with the rules of the ICC.

32. It is one of the purposes of a shareholders' meeting under ICC Art. 58 to vote whether or not to continue business or reduce capital to represent the true remaining capital. Such resolutions must be published to protect third-party creditors by publicizing the diminution of capital. This is confirmed by the fact, if any confirmation were needed, that under ICC Art. 74, and Article 23 of ISL's Statutes, notices of shareholders' meetings must be published in the Iranian Official Gazette as a condition to the validity thereof. Moreover, under the ICC, the actual capital of the corporation must appear upon its letterhead and its other documents, and thus the failure to cause any such reduction of capital to be publicized by the aforementioned methods, necessarily, in my opinion, entitles each outside creditor to look personally to each responsible director for the full amount of its loss suffered in dealing with a corporation whose capital diminution was not properly publicized.

33. ICC Art. 61 broadly creates liability on the part of each director both for statutory violations such as those above and hereinbelow mentioned in the case of ISL, as well as "for any errors (faults) they may have been guilty of in management". The reference to the distribution of "fictitious" dividends in the English translation of ICC Art. 61 (annexed as part of Exhibit A), is but one of the provisions of this article and is severable therefrom, so that a director of a "corporation", such as ISL, who has been guilty of culpable errors in management or who has violated or permitted to be violated any specific statutory duty of the directors under

causes to third-party creditors irrespective of whether or not such errors or violations took the form of distribution of "fictitious", i.e., unwarranted, dividends.

34. Supposing that an Iranian corporation issues shares without proper payment (ICC Art. 29); or that its capital is not subscribed in full and at least one-third of it is not paid before it commences business (ICC Art. 38); or property constituting payment of capital in kind is not delivered to the corporation in full (ICC Art. 39); or the general meetings of shareholders do not approve any subscriptions made in non-cash property (ICC Art. 41); or that a declaration of payment of shares is not filed or is false when filed (ICC Art. 50); then in each of the above cases the practical consequence under Iranian law would be, in my opinion, that each shareholder with knowledge or who should have had knowledge of an Iranian "corporation", actual or purported, such as ISL, is treated under ICC Art. 220 as a general partner in a general partnership or co-proprietorship, without any limit upon his personal liability for any debts of whatsoever nature contracted by such presumed partnership or co-proprietorship.

35. It also inescapably follows under ICC Arts. 82 and 220 read together, that each and every shareholder with knowledge or who should have had knowledge, regardless of the number of shares held by him in such presumed partnership or co-proprietorship, and also each and every director thereof, is liable jointly and severally (in solido) to outside creditors. This liability attaches in full in favor of every third-party creditor, regardless of such director's or shareholder's degree of participation in the affairs of the presumed partnership or co-proprietorship; and it is subject only to his right or reimbursement of contribution as against other directors or shareholders to the extent that he paid more than his pro rata share of the debts of such entity. There are no other limitations of any kind upon the joint and several liabilities mentioned above in this paragraph.

Continental European corporations (sociétés anonymes), unlike American corporations, Iranian corporations do not have "officers", but only a Chairman of the Board (Président in France), a Vice-Chairman of the Board, if any (called Vice-Président in France), and one or more managing directors (Administrateurs-Délégués).

37. Under Art. 48 of the ICC, a joint stock company (corporation) may designate one or more directors as Managing Directors, a Chairman, and a Vice-Chairman. The number and the functions of the directors are subject to the provisions of the Articles of Association. Directors (Administrateurs), as such, have no signatory or executive powers for an Iranian company except as specially empowered in the Articles of Association, and their powers are registered in the Companies' Registrar's Office, in which case they are known as Managing-Directors (Administrateurs-Délégués).

The employees of an Iranian corporation who perform some of

the functions of American corporate "officers", such as those of Treasurer, 236a
corporate Secretary, etc., are not normally members of the Board.

The functions of the Iranian Chairman (Président), Vice-Chairman (Vice-Président), if any, and Managing Directors (Administrateurs-Délégués) are more or less as in French practice. There is no exact Iranian equivalent to the American office of President. The nearest equivalent is that of General Manager, often coupled, where he is given power to bind the corporation by his signature, with the title of Managing Director (Directeur Général - Administrateur-Délégué).

38. I am informed by Healy & Baillie that there is evidence that in their operations in the United States, various persons acting in the name of ISL used such titles as its "Vice-President", "Treasurer", "Secretary", or "Assistant Secretary". In my opinion such titles are not only meaningless but fictitious insofar as Iranian law is concerned, because no provision is made in Iranian law for "officers" of a corporation in the American sense.

... that under Iranian law and its
... the two Managing Directors signing jointly either
... or by duly constituted attorneys (proxies) under written power
of attorney, and expressly signing their names only as such attorneys, had
power to bind the corporation.

39. The only authorized signatories according to the Statutes (Articles) of ISL, Article 18, are as follows :

" Either or both of the Managing Directors can, jointly
" or separately, delegate their power, partly or totally,
" to each other or to some other person, provided that
" the delegation is in the form of a Power of Attorney. "

Consequently, if anyone, whether or not an ISL director, acted in the name of ISL without a Power of Attorney, and without expressly signing in the

name of the principal who gave him the Power, he was powerless to validly bind ISL. Such Powers of Attorney must, under Iranian law, be produced for each transaction, though it is not obligatory to publish them in the Official Gazette.

According to Article 19 of the Articles of Association (Statutes) of ISL : "No member of the Board of Directors is entitled to do and perform any act, individually, in the company's name, except with a special authorization of the Board of Directors."

40. According to the official records kept by the Companies' Registrar in Tehran, and its Articles (Statutes), a copy of which is annexed hereto, ISL had five directors, Nickolas Spanos, John L. Manta, Christ Karafotias, Hask Babayan and Dr. Amir Aslan Afshar, the last two being Iranian nationals and the first three being the majority American directors.

41. Based upon information by Healy & Baillie, I understand ^{that} at the material times said Karafotias (son-in-law of George L. Manta, who is John L. Manta's brother) had obtained a power of attorney from said Babayan, and

John L. Manta) had obtained a similar power of attorney from said Dr. Amir Aslan Afshar, and that such powers encompassed the full powers to act as a member of the Board of Directors of ISL. (Unlike certain systems, Iranian law does permit delegation by a director of his powers as such to an attorney-in-fact.)

42. Under Iranian law, when an attorney-in-fact (such as, in the above example, said Karafotias and said Steve Manta) accepts a power of attorney from his principal (in this case Messrs. Babayan and A.A. Afshar), he is not merely privileged to act as a director if he so wishes, but must

affirmatively act to protect the corporate interests, to the full extent as though he himself were one of its directors.

43. As provided for by Art. 51 of the ICC : "The responsibility of the directors towards shareholders is that of an attorney towards his principal." And Arts. 662 and 663 of the Iranian Civil Code provide as follows : Art. 662: "The proxy must be given for a matter which the principal himself is entitled to engage in." Art. 663: "An attorney cannot execute a matter which is outside the limits of his authority."

44. If an attorney-in-fact for a corporate director (such as the above attorney-in-fact for ISL directors) fails to affirmatively act as required by law, he becomes personally liable to third-party creditors for any non-feasance, any neglect of duty, or any misfeasance to the same extent as a director. This is so on general principles of Iranian law. Further, Art. 263 of the Iranian Civil Code (under Chapter I, Section 5, regarding contracts, which deals with the property of third parties or which are unauthorized) provides as follows :

- " If the original owner of any property refuses to sanction
- " a transaction about it and the purchaser is ignorant of
- " the fact that the sale was unauthorized, he can claim
- " back from the unauthorized seller both the price paid and
- " also any damages, but he can only claim back the price
- " paid if he knew that the transaction was made without
- " authority. "

My opinion, there could be no question under Iranian law that (assuming I am right in my understanding that the Manta family acted, upon ISL affairs, in concert, as a family group) three of the persons mentioned above, namely, said Karafotias, said John L. Manta and said Steve Manta, had effective working control over ISL because they held two out of the five seats on its Board of Directors in their own right and two further

votes out of the total of five of the Board under the aforesaid powers of attorney or proxies given then by Messrs. Babayan and Afshar.

46. Under Iranian law as affected by ISL's Statutes, Art. 23 thereof : "All notices of meetings must be published in the Official Gazette and another newspaper as a condition of the validity of the holding of such meetings."

47. All minutes of shareholders' meetings affecting matters which legally must be brought to the knowledge of the public, for example, election of members of the Board of Directors, authorized signatories, amendment of the Statutes (Articles of Association), increase or reduction of capital, and dissolution must be filed with the Companies' Registrar as a condition of the validity of the action taken at such shareholders' meeting.

48. In all the years from 1962 through 1966, only the following-described minutes of ISL shareholders' meetings, and no others, were filed in the Iranian Companies' Registration Office :

- (a) Minutes of general shareholders' meeting, dated 8.2.1341 (April 28, 1962) stating that Messrs. Tavakoli and Namdar were no longer shareholders of the company because they did not pay the amount of their shares. This meeting was held without invitation and was not registered.
- (b) Minutes of general meeting, dated 12.3.1341 (June 2, 1962) stating that Mr. Spanos and Mr. John L. Wanta became shareholders in the company and the new Articles of Association are approved. This meeting is registered and published in the Official Gazette.

...er filed with the Companies' Registration
dated 9.3.1343 (May 30, 1964) Messrs. Amir Aslan
...shar and Babayan stated :

" As the foreign shareholders are not taking into consi-
" deration their obligations and are taking steps outside
" Iran without previous agreement of Iranian shareholders,
" we have decided to liquidate the company."

- (d) Minutes of general shareholders' meeting, dated 10.3.1344 (May 31, 1965) showing that the following persons were elected members of the Board of Directors :

From Group A :

Nicholas Spanos,	Managing Director
John L. Manta,	Member of the Board
Christ Karafotias,	Member of the board

From Group B :

Amir Aslan Afshar,	Chairman of the Board of Directors
H. Babayan,	Managing Director

This meeting was invited by letter, by publication in the press and is registered and published in the Official Gazette.

- (e) Minutes of the general meeting of shareholders, dated 6.5.1345 (July 28, 1966) in which there are some discussions about the current business of the company, specifically as to freight monies received abroad by the foreign shareholders without reporting it to ISL, and a proposal for the liquidation of the Company. This meeting was invited by letters and published in the newspapers.
- (f) Minutes of the general meeting of shareholders, dated 6.5.1345 (July 28, 1966) in which there are some discussions about the current business of the company. This meeting was adjourned. This meeting was invited by letters and published in the newspaper.

49. As the said public record conclusively shows, none of said shareholders' meetings has

- (i) authorized either the issuance of \$26,000.00 (or any other notes of ISL) to John L. Manta (or to anyone else) or the repayment by ISL of such notes by any of its directors, or the repayment of any other loans supposedly made to ISL, within the intent of ICC Art. 53;

authorized either the ships or any other property than cash to be paid in or received as capital of ISL, within the intent of ICC Art. 41.

50. For convenience of reference, I have attached Exhibits A, B, C, D and E annexed hereto to a separate identifying affidavit of mine, of even date herewith.

EMPIRE OF IRAN
DISTRICT AND CITY OF TEHRAN
EMBASSY OF THE UNITED STATES
OF AMERICA

Subscribed and sworn to
before me this 20 day
of April, 1972.

John M. Evans
John M. Evans
American Vice Consul

United States Consul TEHRAN, IRAN

H. Sotoudeh

HASSAN SOTOUDEH

SECOND REQUEST TO ADMIT

242a

(pp. 242a-252a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IRANIAN SHIPPING LINES, S.A.,
a corporation,

: Docket No. C.A.
72 Civ. 1392 H.F.W.

Cross-Claimant,

:

vs.

:

PETER MORAITES, et al.,

:

SECOND REQUEST TO
ADMIT

Impleaded Defendants.

:

-----x

PLEASE TAKE NOTICE that Defendants George L. Manta,
Christ Karafotias, Frank J. Manta, Stephen A. Manta, J. L.
Manta, Inc., Manta Vin-Cor Steel Corporation and Frank J. Manta
and Leo J. Manta, as Executors under the Will of John L.
Manta, herein collectively called the "Manta Defendants",
are requested, pursuant to Rule 36 FRCP, to admit the following,
namely that:

1. Exhibit 1* is a true, complete and correct copy
of the official Persian text of Articles 1 through 220 of the
Iranian Commercial Code of 1932 as in full force and effect
at all times between the years 1932 and at least March 15,
1969. (Said Code, as so in effect, is hereinafter referred
to as "ICC.")

2. Defendant "Iranian Shipping Lines S.A." (herein
called "ISL") was organized or purportedly organized as an
Iranian "sherkat sahami", translatable to the French "société
anonyme" denoted by the suffix "S.A." in its corporate name,
and equivalent to a corporation, for which the term "joint
stock company" may also be used, in the year 1961, with its

*The Exhibits referred to herein are the Exhibits attached and
referred to in the Request to Admit of the Manta Defendants,
dated May 28, 1976.

head office in Tehran.

3. (a) In consequence of the foregoing, defendant ISL and the rights, duties, powers, and liabilities, if any, of its incorporators, promoters, subscribers, shareholders, directors and creditors were until at least March 15, 1969, governed by and subject to the applicable provisions of said Articles 1 through 220 of the ICC.

(b) All acts, events, occurrences and omissions involving, relating to or otherwise affecting ISL or the other persons mentioned in 3(a) above transpiring during at least the years 1961 through 1963 are likewise governed and subject, and are not affected by any of the 1969 or other ICC amendments.

4. Exhibit A to Exhibit 2 (said Exhibit 2 being a copy of a supplemental affidavit of H. Sotoudeh, also known as Hassan Sotoudeh Tehrani and herein called "Sotoudeh", sworn to April 20, 1972, herein called the "Supplemental Sotoudeh Affidavit") is a true, correct and complete English translation of said Articles 1 through 220 of the ICC, the Persian text of which is Exhibit 1.

5. (a) Exhibit 3 is an official Iranian Government translation into English of ICC Articles 20, 34, 38, 42, 48, 51, 53, 55, 58, 61, 82, 83, 87, 90, 116, 201, 213 and 220. Said translation derives its official status as such because certified to by an Official Translator of the Iranian Ministry of Justice, whose status as such and signature are duly certified in said Exhibit 3 by the agency of the Iranian Government empowered to issue such certifications, namely, the Iranian Ministry of Justice whose certification is legalized therein by the Iranian Ministry of Foreign Affairs.

(b) The said official translation into English of said eighteen Articles contained in Exhibit 3 hereto is (except for the omission therein of the words "will" and "within" in Articles 82 and 87, which omissions are immaterial errors in copying) identical to the English translation of the same eighteen Articles contained in Exhibit A to said Exhibit 2, an ICC English translation issued by the United States Embassy in Tehran and certified to by Sotoudeh.

(c) The English translation of ICC Articles 1 through 220 constituting Exhibit A of Exhibit 2, i.e., the Supplemental Sotoudeh Affidavit, is likewise an official Iranian Government translation of Exhibit 1 annexed hereto (in addition to being a translation covered by the Principal Sotoudeh Affidavit, Exhibit 2 itself) by virtue of the certification at the foot of said Exhibit A made by the same Official Translator whose status as such and signature are certified to by the Iranian Ministry of Justice, with legalization of the certificate of such Ministry by the Iranian Ministry of Foreign Affairs, in said Exhibit 3.

6. (a) Exhibit B to Exhibit 2 (i.e., the Supplemental Sotoudeh Affidavit) is a true copy of the "Statutes" of ISL as executed on June 2, 1962 and filed in 1962 with the appropriate Iranian government agency, namely the Companies' Registration Office in Tehran, Tehran being the designated location of ISL's head office.

(b) Said Statutes, herein called the "Statutes", were ISL's governing instrument and constitute its Articles or Memorandum of Association and the substantial equivalent of a New York corporation's Certificate of Incorporation and By-laws combined.

7. (a) Exhibit C to Exhibit 2 is a true copy of five declarations made in New York by ISL's two Co-Managing Directors and covering purported payment for shares issued by ISL, dated December 23, 1964, representing alleged payment for 14, 2, 46, 96 and 42 shares, respectively, thus totaling in all the 200 issued shares of capital stock of ISL.

(b) Said five declarations refer to the same 200 shares as are contemplated in paragraph 5 of ISL's Statutes, Exhibit B to said Exhibit 2.

(c) No other ISL shares than said 200 shares were ever issued or contemplated.

(d) Each of said 200 shares had a required nominal or par value of 50,000 Rials.

(e) Said par or nominal value was not paid, either in whole or in part, upon any of said 200 shares or any other shares of ISL.

(f) Neither said Exhibit C to said Exhibit 2 hereto, nor any other declaration or proof under ICC Article 50 regarding payment of the par or nominal value of ISL shares was ever filed or registered at the Companies' Registration Office in Tehran or any other Registration Office.

8. (a) ISL issued in 1964 and 1965 to the order of John L. Manta its promissory notes substantially in the form of Exhibits D and E to Exhibit 2 in the aggregate principal amount of \$826,000. (Said ISL promissory notes are herein collectively called the "Soufteh's".)

(b) The consideration for the issuance of the Soufteh's was transfer to ISL of title to the three Iranian-flag vessels called the "KASHAN", "HAMADAN" and "SHIRAZ".

(c) The soufteh's were in the possession of John L. Manta or of one or more of the other Manta Defendants from about the time of their issuance until their delivery by one or more of the Manta Defendants to defendant Nasser Afshar in 1966.

9. (a) Exhibit 4 (herein called the "Principal Sotoudeh Affidavit") is a copy of the affidavit sworn to April 20, 1972, by Sotoudeh.

(c) From 1950 to 1967 Sotoudeh was Professor of Commercial Law at the University of Tehran.

(d) At the time the Principal Sotoudeh Affidavit was executed, Sotoudeh was (i) duly admitted to practice as an attorney at law before all Courts in Iran and (ii) the author of a four volume Persian work entitled "Commercial Law", including company law as laid down in ICC Articles 1 through 220, which work was the only full treatise published upon its subject-matter in Iran.

(e) Sotoudeh was, on said date, April 20, 1972, and still is, a recognized expert upon Iranian civil law and commercial law, including Iranian corporate law.

10. Exhibit 4 (the Principal Sotoudeh Affidavit) contains the following, among other, correct statements, interpretations or conclusions of or with respect to Iranian law or Iranian legal records, to wit:

(a) Legal rights, duties, powers and liabilities of or relating to an Iranian corporation were, between 1932 and 1969, and now continue to be governed by the Iranian Commercial Code of 1932 ("ICC").

(b) The ICC was revised effective March 15, 1969, and corporations then existing were afforded three years

thereafter to comply with its new provisions. The Iranian Commercial Code as so revised in 1969 is not applicable to rights, duties, powers and liabilities fixed, accrued or otherwise existing prior to the said 1969 revision; but said matters continue to be governed by the ICC provisions set forth in Exhibit A to Exhibit 2. Each of the foregoing statements is correct.

(c) As stated in paragraph 12 of the Principal Sotoudeh Affidavit, ISL was a "merchant" under the ICC.

(d) The conclusions set forth in paragraphs 13, 14, 15, 16 and 22 of said Affidavit are correct.

(e) In reference to paragraph 18 of said Affidavit, it is correct that under the ICC a promoter, shareholder or director of an Iranian corporation who (i) causes or permits to be made a false or inaccurate valuation or appraisal of such corporation's capital or (ii) fails to disclose such corporation's defective capitalization (assuming for this purpose, without conceding, that it is in fact defective) to third parties with whom such person deals in relation to such corporation or its business thereby becomes personally liable to such parties.

(f) In reference to paragraph 16 of said Affidavit, it is a fact that Iranian law did not permit, during the years from 1932 through at least 1968, either (i) the existence at any time of authorized but unissued shares of capital stock or (ii) the conduct or transaction of any business in corporate form before the requirements of the laws and regulations cited in said paragraph 16 were satisfied.

(g) It is also a fact during the same period no such conduct or transaction was permitted by Iranian law prior to the satisfaction of the requirements of ICC Article 50 as contained in Exhibit 2.

1968 Iranian law required all paid-in capital to be received and recorded as and expressed in terms of the par or nominal value of issued shares. It neither authorized nor recognized as capital any other shareholder advances or contributions, either in cash or in kind.

(i) In reference to paragraphs 17 and 25, of said Affidavit

(A) it is correct that the transfer of the "SHIRAZ", "HAMADAN" and "KASHAN" to ISL in 1964 and 1965 did not, under Iranian law, constitute any addition to capital or valid payment for any of its shares; and

(B) it is also correct that except for two of the Soufteh's totaling approximately \$686,000, all of the Soufteh's and each and every other purported indebtedness of ISL, whether or not evidenced by notes, directly or indirectly, contracted with or purportedly incurred in favor of either John L. Manta (since June, 1962) or defendant Christ Karafotias (since May 31, 1965) was void ab initio and wholly unenforceable for failure to comply with ICC Article.53.

(j) The principles of liability of directors of an Iranian corporation under the ICC by reason of certain actions or omissions therein referred to are correctly set out in paragraphs 28, 30, 31, 32, 33, 35 and 43 of said Affidavit.

(k) The duties, responsibilities and liabilities of shareholders and directors of an Iranian corporation in respect or by reason of acts, events or omissions occurring at any time in the years 1961 through at least 1968 under ICC Articles 1 through 220 as set out in Exhibit A to Exhibit 2

are not expunged, rescinded, limited, lessened, diminished or qualified, nor are the rights, privileges or immunities of such shareholders or directors as therein set out enhanced or enlarged either by the Iranian Constitution, or by any other enactment, statute, code, law, regulation, or legal doctrine or rule other than any applicable Iranian statutes of limitations (also known as "prescription").

(1) Paragraphs 34 and 35 of said Affidavit correctly set out the liabilities of a shareholder of a purported Iranian corporation under the ICC for the debts of such corporation in the situations described in said paragraphs 34 and 35.

(m) The statutory management structure of an Iranian corporation is correctly set out in paragraph 37 of said Affidavit; and paragraph 38 thereof is correct in stating that Iranian law makes no provision for corporate "officers" in the American sense and that in the case of such a corporation the titles therein described are meaningless and fictitious.

(n) Each of the statements in paragraphs 38, 39, 42 and 44 of said Affidavit is correct.

(o) It is correct that, as stated in paragraph 40 of said Affidavit, the last board of directors of ISL (consisting in all of five directors) as registered with the Companies' Registration office in Tehran, is composed of:

Nick C. Spanos

John L. Manta

Christ Karafotias

Hask Babayan

Amir Aslan Afshar

(p) John L. Manta was such director from 1962 when he signed ISL's "Statutes" as such (Exhibit "C" to Exhibit 2) until the time of his death. Defendant Christ Karafotias

was such director from May, 1965 (at which time he replaced Captain Philip Spanos as a shareholder and director of ISL) until at least December 31, 1968.

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(q) The statements in paragraphs 46 and 47 of said Affidavit are correct.

11. (a) The only minutes of ISL shareholders' meetings ever filed with the Tehran Companies' Registration Office for the period from 1961 through 1966 are those described in paragraphs 48 of the Principal Sotoudeh Affidavit.

(b) Under the ICC, such meeting can have no validity or can result in no valid action unless the minutes thereof are so filed.

12. (a) Defendant Christ Karafotias ("Karafotias") received and held a power of attorney from Hask Babayan in the latter's capacity as a Co-Managing Director of ISL. Such power was not revoked until at least June 30, 1966.

(b) Defendant Steve Manta ("Steve") received and held a power of attorney from Amir Aslan Afshar in the latter's capacity as a director and Chairman of the Board of ISL. Such power was not revoked until at least June 30, 1966.

13. (a) John L. Manta became a shareholder of ISL in 1962. He continued as such until his death.

(b) Karafotias became a shareholder of ISL in May of 1965 and his status as such never changed.

(c) Nick C. Spanos ("Spanos") became a shareholder and Co-Managing Director of ISL in 1962 and his status as such never changed.

14. John L. Manta and defendant George L. Manta ("George") were brothers and business co-partners. Such business co-partnership included all shipping ventures in which

they had any interest, direct or indirect.

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15. The shipping ventures in which John L. Manta and George had interests, direct or indirect, included Icarian Development Company S.A. ("Icarian"), Persian Shipping Services ("PSS"), Iranian Lloyd ("Lloyd") and ISL.

16. (a) John L. Manta and George had, between some time in 1964 and at least June 30, 1968, a substantial interest, direct or indirect, in

(i) The said vessels "KASHAN", "HAMADAN" and "SHIRAZ";

(ii) ISL; and

(iii) Icarian

(b) Each of the other Manta Defendants had a like interest over the same period of time.

17. During 1964 and 1965 John L. Manta and George had substantial interests, direct or indirect, in PSS and Lloyd, which two corporations, at the time such interests existed, owned said three vessels and transferred title thereto (or caused it to be transferred) to ISL.

18. (a) During the year 1964 and continuously thereafter until at least December 31, 1968, Spanos held 96 Class A shares (the "Spanos Shares") of ISL's 200 issued shares of both classes.

(b) A substantial portion of the Spanos Shares was held by him in a fiduciary capacity for others, including, directly or indirectly, John L. Manta and George and their respective spouses and children.

19. (a) During 1964, 1965 and 1966 defendants Christ Karafotias, Steve Manta and Frank Manta acted in a representative and fiduciary capacity for John L. Manta and George in relation to ISL and its business.

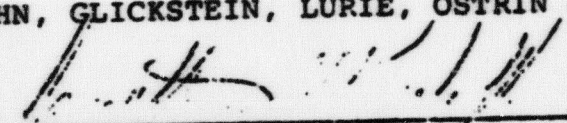
(b) Such representative and fiduciary capacity of said three defendants also encompassed fiduciary duties on their part running to the respective spouses and children of John L. Manta and George.

21. During 1964, 1965 and 1966 defendants J. L. Manta, Inc. and Manta Vin-Cor Steel Corporation (a) paid funds to or for account of ISL and (b) received, directly or indirectly, funds of ISL.

22. With reference to paragraph "21" above, said two corporate defendants debited said outgoing funds and credited said incoming funds to the respective accounts of John L. Manta and George.

Dated: New York, New York
June 4 , 1976

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL

By 

A Member of the Firm
Attorneys for Plaintiffs
1370 Avenue of the Americas
New York, New York 10019

TO:

BOOTH, LIPTON & LIPTON, ESQS.
Attorneys for Manta Defendants
292 Madison Avenue
New York, New York 10017

NOTICE OF MOTION

(pp. 253a- 254a)

253a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
IRANIAN SHIPPING LINES, S.A., :
a corporation, :
Cross-Claimant, 72 Civ. 1392 (HFW)
-against- : NOTICE OF MOTION
PETER MORAITES, et al., :
Impleaded Defendants. :
----- x

S I R :

PLEASE TAKE NOTICE that on the 19th day of July, 1976, defendant Arya Shipping Lines, S.A., upon the annexed Statement of Material Facts in accordance with Rule 9(g) of the General Rules of this Court, the Affidavit of Musa Sabi, sworn to June 12, 1976, and upon the legal Memorandum submitted herewith, and upon all prior proceedings had and papers filed herein, will move this Court, before the Hon. Henry F. Werker, at the United States Courthouse, Foley Square, New York, New York, at 10:00 o'clock in the forenoon of that day or such other date or time as may be set by the Court, for an Order pursuant to Fed. R. Civ. P. 56 awarding summary judgment in favor of defendant Arya Shipping Lines, S.A. and against the purported cross-claimant Iranian Shipping Lines, S.A. and dismissing this action, and for such other and further relief as the Court may deem appropriate.

The grounds for this motion are that the purported cross-claimant has been dissolved involuntarily under applicable Iranian law, the law under which cross-claimant was purportedly organized, and, consequently, that it lacks the requisite capacity to maintain this litigation, all as is set forth more

fully in the aforesaid Statement of Material Facts, Affidavit and Memorandum.

PLEASE TAKE FURTHER NOTICE that, under rules established by the Hon. Henry F. Werker, answering papers, if any, must be received by movant, filed with the Court and a duplicate brought to chambers at least ten days prior to the return date of this motion.

PLEASE TAKE FURTHER NOTICE that copies of the Exhibits A (Commercial Code of Iran, effective 1932), B (1969 Amendments to the Commercial Code) and C (1972 Amendment to Article 284 of the 1969 Amendments to the Commercial Code) to the Affidavit of Musa Sabi, sworn to June 12, 1976, have been separately submitted to the Court and to counsel for Iranian Shipping Lines, S.A. The original exhibits have been retained by Rogers & Wells and are available for inspection on reasonable notice to any counsel who so requests.

Dated: New York, New York
June 22, 1976

Yours, etc.,

ROGERS & WELLS

By *Robert B. Widen*
A Member of the Firm
Attorneys for Defendant
Arya Shipping Lines, S.A.
200 Park Avenue
New York, New York 10017
(212) 972-7000

TO:

All Counsel of Record

STATEMENT OF MATERIAL FACTS

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(pp. 255a-256a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

IRANIAN SHIPPING LINES, S.A.,
a corporation,

Cross-Claimant,

-against-

PETER MORAITES, et al.,

Impleaded Defendants.

----- x

72 Civ. 1392 (HFW)

STATEMENT OF
MATERIAL FACTS

Defendant Arya Shipping Lines, S.A., in accordance with Fed. R. Civ. P. 56 and Rule 9(g) of the General Rules of this Court, states that there is no genuine issue to be tried as to the following material facts:

1. Iranian Shipping Lines, S.A. ("ISL") was organized in 1961 as a "Joint Stock Company," under the Commercial Code of Iran that had become effective in 1932. (Sabi Aff.* ¶'s 5, 11 and 12.)

2. In 1969, the Parliament of Iran amended the 1932 Code by providing that all pre-existing Joint Stock Companies, such as ISL, were required to transform themselves into one of two new forms of organizations ("Public" or "Private" Joint Stock Companies) or into a form of organization other than a Joint Stock Company. (Sabi Aff. ¶'s 6-8, 10-12.)

3. The 1969 Amendments provided a three-year grace period for the consummation of the transformation referred to in ¶ 2 and further provided that all Joint Stock Companies failing so to transform themselves within the grace period would be dissolved.

* References are to the affidavit of Musa Sabi, sworn to June 12, 1976.

(Sabi Aff. ¶'s 8,10.)

4. In 1972, the grace period referred to in ¶ 3 was extended one year by the Iranian Parliament, so that it expired on April 27, 1973. (Sabi Aff. ¶'s 9,11n.)

5. ISL never consummated the transformation referred to in ¶ 2. (Sabi Aff. ¶'s 11 and 12.)

6. Under Iranian law, ISL is considered as having been dissolved as of April 27, 1973, and, thereunder, lacks the capacity to maintain this litigation. (Sabi Aff. ¶'s 11 and 12.)

Dated: New York, New York
June 22, 1976

Rogers and Wells
Attorneys for Defendant
Arya Shipping Lines, S.A.
200 Park Avenue
New York, New York 10017
(212) 972-7000

AFFIDAVIT OF MUSA SABI IN SUPPORT OF MOTION
(PP. 257a-261a)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IRANIAN SHIPPING LINES, S.A., a corporation,	:	72 Civ. 1392 (HFW)
	:	
Cross-Claimant,	:	<u>AFFIDAVIT</u>
-against-	:	
	:	
PETER MORAITES, et al.,	:	
	:	
Impleaded Defendants.	:	

-----x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MUSA SABI, being duly sworn, deposes and says:

1. I make this affidavit in support of the motion of defendant Arya Shipping Lines, S.A. ("Arya") for summary judgment upon the ground that Iranian Shipping Lines ("ISL"), the purported cross-claimant, lacks the capacity to maintain this litigation.

2. I am a citizen of Iran, having been born in that country. I am a practicing attorney, with offices in Tehran, Iran. I was graduated from Stuart Memorial College in England, and I received in LL.B. degree from the Faculty of Law, University of Tehran in 1939. I was admitted as a Member of the Bar Association of Iran in 1942 and have continued to be a member in good standing to date.

3. I have been acting for over 20 years as an Iranian legal counsel for the United States Embassy in Tehran, and for over eight years as the Chief Legal Counsel for the United States Aid of

the Department of State of the United States in Iran. I have presented numerous cases on behalf of various clients before the International Court of Arbitration for the International Chamber of Commerce, Paris. I have also authored and published articles as well as eight books of translations of the law of Iran (two of which I certify to be complete and accurate translations of relevant commercial statutes to be discussed hereinbelow). I am generally recognized as an authority on Iranian law by members of the bar, government and judiciary of Iran.

4. This affidavit will demonstrate that ISL, if it ever validly existed, has been dissolved under the laws of Iran since April 27, 1973.

Regulation of Joint Stock Companies
Under the 1932 Code and 1969 Amendments

5. Annexed hereto as Exhibit A is a copy of my English translation of the Commercial Code of Iran which became effective in 1932 * ("1932 Code" or "Exhibit A"). This Code, in part, concerned Joint Stock Companies such as ISL.

6. On March 15, 1969, the provisions of the 1932 Code were amended by the Parliament of Iran with respect to Joint Stock Companies. Annexed hereto as Exhibit B is my English translation of the 1969 Amendments ("1969 Amendments" or "Exhibit B").

7. The 1969 Amendments divided Joint Stock Companies into two categories, public and private, each category being regulated, to some extent, in a different manner (Exhibit B, Article 4).

* For convenience, all references to dates herein are to the Gregorian calendar, having been converted from the Persian dates corresponding thereto.

8. Joint Stock Companies organized and existing under the 1932 Code did not conform to the 1969 Amendments when the Amendments became effective. The 1969 Amendments (Article 284) required that all such pre-existing Joint Stock Companies convert to one of the approved forms of organization,** and provided procedures for doing so (Exhibit B, pp. 88-97). Specifically, Article 284 of the 1969 Amendments (Exhibit B, p. 91) provided in relevant part:

"Joint stock companies existing on the date this Act was ratified shall be required within three years from the effective date of [the 1969 Amendments] to be transformed into either a private or a public company and to adapt themselves to the rules of this Act; alternatively, to be transformed into one of the types of companies mentioned in the [1932 Code], otherwise they will be dissolved, in which case, they shall be subject to the dissolution proceedings laid down in the [1932 Code]."

Thus, any Joint Stock Company which failed to reorganize as required by Article 284 would be automatically dissolved.

9. Article 284 was itself amended in 1972 in that the three-year grace period was extended for one year. Annexed hereto as Exhibit C is the relevant text (and English translation) of that Amendment, as published in the Official Gazette of Iran ("Amended Article 284" or "Exhibit C").

10. In sum, the law of Iran provided a four-year grace period commencing from the effective date of the 1969 Amendments for conversion of pre-existing Joint Stock Companies to an acceptable, alternative form of organization, and specified that any such company not so converted was dissolved.

** Public Joint Stock Companies, Private Joint Stock Companies, or Non Joint Stock Companies.

The Dissolution of ISL for Failure to
Comply with the 1969 Amendments

11. Annexed hereto as Exhibit D is a certificate concerning ISL's dissolution, issued by the office of the Registrar of Companies and Industrial Properties of Tehran, Iran,* and my translation thereof which I certify to be complete, and accurate ("Certificate" or "Exhibit D").** The Certificate shows that ISL:

"... neither did change its corporate structure to a private joint stock company, or to a public joint stock company, or to the other types of trading companies mentioned in the [1932 Code] nor did it conform to the [1969 Amendments]. Therefore, under the provisions of Article 284 of the [1969 Amendments] and [Amended Article 284], the said Company is considered as having been dissolved as of ... April 27, 1973 and is subject to the liquidation proceedings stipulated in the [1932 Code]."

Under the laws of Iran, therefore, ISL is "dead," and has been so since April 27, 1973.*

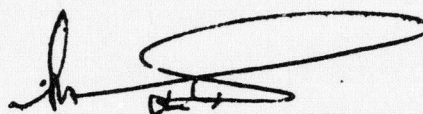
12. This dissolution, applicable to all non-conforming, pre-existing Joint Stock Companies, such as ISL, was involuntary and was caused solely by the failure of ISL to comply with Article 284 of the 1969 Amendments, as extended. And, as a non-entity under the laws of Iran, ISL lacks any corporate capacity

* The Office of the Registrar is a branch of the Ministry of Justice of Iran, General Registry of Land and Deeds. That Office is charged, inter alia, with the function of regulating the establishment of, and maintaining all the records of, trading companies (including Joint Stock Companies) required to be filed under the 1932 Code and 1969 Amendments.

** It should be noted, however, that two references to the Iranian year "1311" correspond to the year 1932 in the United States and not, due to typographical errors, the year 1952. Also, the reference to a date "21.10.1340 (April 10, 1960)" should be, due to typographical errors, "21.1.1340 (April 10, 1961)."

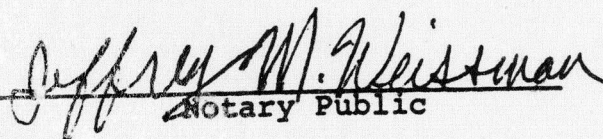
* The 1969 Amendments were ratified by both houses of the Iranian Parliament on March 15, 1969, but, because of applicable procedures, did not become effective until April 27, 1969.

whatsoever, including the capacity to prosecute this or any other litigation.



MUSA SABI

Sworn to before me this
12th day of June, 1976.


Notary Public

JEFFREY M. WEISSMAN
NOTARY PUBLIC, State of New York
No. 4609161
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1977

EXHIBIT D - TRANSLATION - MINISTRY OF JUSTICE - GENERAL
 REGISTRY OF LAND AND DEEDS (pp. 262a-265a)



تاریخ ۱۳۰۰

شماره

پروست

به رهمن شمس
 ۵۲۳۳-۲۸۷۳

Translation

6/7209

20.7.1974

MINISTRY OF JUSTICE

General Registry of Land and Deeds

Certificate

With reference to the records and contents of the file of the Iranian Shipping Company, S.A. (I.S.L.) registered under No. 7761 dated 21.10.1340 (April 10, 1960) it is hereby certified that hitherto the said Company neither did change its corporate structure to a private joint stock company, or to a public joint stock company, or to the other types of trading companies mentioned in the Commercial Code approved on 13.2.1311 (1952) nor did it conform to the provisions of the Act Amending a Portion of the Commercial Code approved on Esfand 24, 1347 (March 15, 1969). Therefore, under the provisions of Article 284 of the Act Amending a Portion of the Commercial Code and the law governing the extension of the time-grace from three years to four years, the said Company is considered as having been dissolved as of 7.2.1352 (April 27, 1973) and is subject to the liquidation proceedings stipulated in the Commercial Code approved in the year 1311 (1952).

This certificate has been issued as per the letter No. 357 dated 19.4.1353 (July 10, 1974) of Musa Sabi, Esq., attorney-at-law, for presentation in the courts of law of the United States and is valid after payment of the legal charges.

Registrar of Companies & Industrial
Properties
(Signed and sealed)

(Legal fees are paid and revenue
stamp affixed and cancelled)

Seen for authentication of the signature of Mr. Mir Abdolbaghi the administrative assistant of the office, of the Registrar of Companies and Industrial Property.

Registrar of Companies & Industrial
Property
Hamid Jamshidi (Sgd & sealed)

— هیدر دیر —

- 2 -

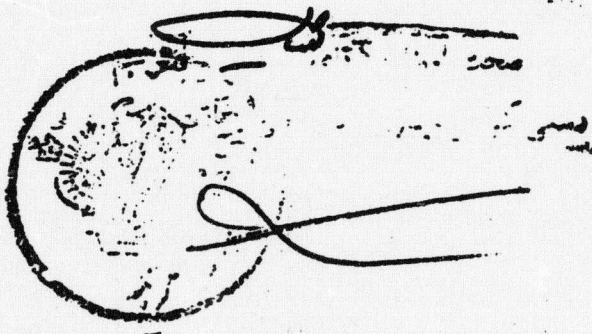
Reverse

No. 6040 dated 8.5.1353 (30.7.1974) seen for authentication of the signature of Mr. Jamshidi and the seal of the office of the Registrar of Companies, marked (X), regardless of the contents herein, for, Chief, authentication and Personal Status Bureau.

Stamp 50.-Rls., seal of the Ministry of Foreign Affairs (Sgd.)
(Two Revenue stamps affixed and cancelled.)

Certified to be a true translation - Official translator to the
Ministry of Justice - Musa Sahi

ترجمه بر اصل است - مترجم رسمی وزارت دادگستری - موسی صبی



تاریخ ۱۳۰۰

شماره

پوست



وزارت بازرگانی و صنایع

سازمان ثبت اسناد و املاک کشور

گواه

۹-۸۴
۹۴۹

شرکت سهامی خطوط کشتیرانی ایران ثبت شد بشماره ۷۷۶۱ - ۲۱ / ۱ / ۴۰ بدینوسیله با توجه به محتویات پرونده گواهی میشود که شرکت مزبور تا این تاریخ نوع خود را از سهامی بشرکت سهامی خاص یا عام و یا نوع دیگری که شرکتهای تجارتی مذکور در قانون تجارت مصوب ۱۳ / ۲ / ۱۳۱۱ مندرج است تبدیل نکرد موضوع خود را با مقررات قانون اصلاح قسمتی از قانون تجارت مصوب ۱۲۴۰ منقذ ماه ۱۳۴۷ تطبیق نداد ماست لذا با توجه به ماده ۲۸۴ قانون اصلاح قسمتی از قانون تجارت و قانون مصوب ۵۲ / ۲ / ۱۳۰۷ منحل شد محسوب میشود لیکن از لحاظ مقررات انحلال مشمول قانون تجارت مصوب ۱۳۱۱ میباشد.

این گواهی حسب نامه شماره ۳۰۷ - ۱۹ / ۴ / ۵۳ آقای موسی صبی وکیل پایه یک دادگستری جهت ارائه به محاکم قضائی کشور آمریکا صادر و پس از پرداخت هزینه قانونی دارای اعتبار است

اداره کل ثبت شرکتهای و مالکیت صنعتی

۱۳۰۰

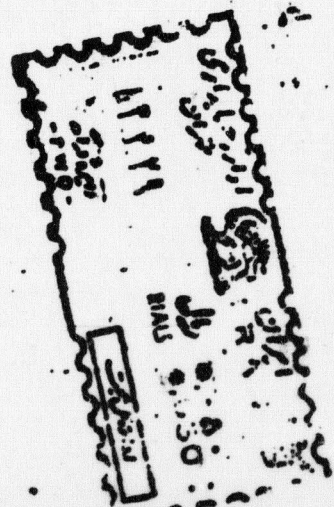
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مستند اسناد آقای بر عبدالباقی عادل اداره سند گواهی است

مدیر کل ثبت شرکتهای و مالکیت صنعتی

محمد علی

Hamid Jemahidi



EXHIBITS TO AFFIDAVIT OF MUSA SABI

266a

(pp. 266a-288a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

IRANIAN SHIPPING LINES, S.A.,
a corporation,

Cross-Claimant,

-against-

PETER MORAITES, et al.

Impleaded Defendants.

----- x

Index No.
72 Civ. 1392 (HPW)

Exhibits to the
Affidavit of Musa Sabi,
Sworn to June 12, 1976

THE COMMERCIAL CODE OF IRAN

Translated

and

Published

By

MUSA SABI

Attorney-at-law

210, Shah Avenue, Tehran

Copyrights, 1972

by

Musa Sabi, 210 Shah Avenue, Tehran

PROLOGUE

TRADE AND ECONOMY have always been considered as the strongest factor in shaping the human civilization and the growth of nations. No trade can thrive in the absence of sound legal provisions and an efficient machinery of justice guaranteeing the enforcement of such provisions and regulations.

In certain countries there exist special courts dealing exclusively with the commercial problems and settlement of disputes arising from commercial transactions.

After the Constitutional Law, the Commercial Code ranks first among the various enactments and, in a sense, enjoys even a higher degree of importance than the Civil Code.

The creation of companies and corporations envisaging the association of individuals to trade under a special name entirely separate from the said individuals in their private capacity, has revolutionized the world's economic system. The ordinary law does not allow a single individual to separate his private means from those used in his business and to render immune the former from liability incurring from the latter. The position of a single trader, under the ordinary law, is fraught with danger due to his commercial risks. Apart from the individual aspect, the social aspect of the matter also is of paramount importance.

The commercial laws of Iran are still in their stage of infancy, compared with the commercial history of the European countries. Before the adoption of Parliamentary Monarchical System, there did not exist any properly-defined regulations in Iran governing the cheques, bills of exchange, promissory notes and no other enactment whatsoever governed the companies and other entities. A careful study of the legislative history of Iran will reveal that the first Act falling under the domain of trade was passed in the year 1910. It governed the acceptance of the bills of exchange, and was amended in the following year and eventually repealed by subsequent enactments.

In the year 1914 a special Act was passed by the Iranian Parliament for the formation of a commercial court dealing exclusively with commercial disputes. The said court came into existence and started functioning. The Act was amended in 1925 and repealed five years later.

The present Commercial Code of Iran is based on the Act which was passed

by the Majlis Justice Committee in three sessions on 25th Dalve 1303 (1924), 12th Farvardin 1304 (1925) and 12th Khordad 1304 (1925).

Subsequently, the said Act underwent several amendments and finally it was annulled in the year 1932 and repealed by the present Commercial Code.

The provisions of Iran's Commercial Code, however, have failed to cope with the requirements of the present day world. Several partial amendments have been introduced for this purpose, all of them prompted by immediate requirements but hitherto no attempt has been made for an overall review of the entire work. The amendments already made or new Acts passed are as follows:

1. The Insurance Act approved on 7th Ordibehesht 1316 (1937).
2. The Legal Bill Governing the Cheque.
3. The Legal Bill Governing the Chamber of Commerce and Industry.
4. The Act Governing the Formation of Commercial Banks.
5. The Maritime Act.
6. The Act Governing the Attraction and Formation of the Stock Exchange.

In addition to the enactments cited above, on 15th March 1969 a Legal Bill was passed by the Special Joint Committee of both Houses of Parliament, comprising 300 Articles and 28 Notes, whereby the regulations stipulated in the Commercial Code in respect of the Joint Stock Companies (Articles 21-93) were repealed and replaced by the said Legal Bill.

However, the new Legal Bill the way it is drafted, has granted a grace period of three years to the Joint Stock Companies already formed prior to the passage of such Legal Bill, adapt themselves to the provisions therein contained. The grace period has been extended for another additional one-year period.

Therefore, so long as the said grace period does not expire, the Articles to which reference has been made in the said Legal Bill, shall be enforceable.

It is further learned that a Special Committee has been appointed with a view to review the new Legal Bill. It is beyond any doubt that the said Committee will take into consideration the effect of the new provisions on other types of companies and solve the present legal dilemma.

The Commercial Code of Iran in its present shape had been translated by the Chief Inspector of the former Imperial Bank of Iran. The writer reviewed the said translation and compared the same with the Farsi text and made necessary corrections and amendments, and added footnotes to make the work more understandable.

It is hoped that the work thus reproduced will be of help to the English-speaking readers in understanding the current commercial provisions of Iran.

MUSA SABI
Attorney-at-Law

Nov. 15, 1972

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PART THREE

Trading Companies

CHAPTER ONE

On Various Kinds of Companies and Rules Concerning Them

Article 20

There are seven kinds of trading companies:

1. The Joint Stock Company
(Sherkate Sahami)
2. The Limited Liability Company
(Sherkat ba Massouliat Mahdoud)
3. The General Partnership
(Sherkate Tazamoni)
4. The Limited Partnership
(Sherkate Mokhtalet Ghair Sahami)
5. The Joint Stock Partnership
(Sherkate Mokhtalet Sahami)
6. The Proportional Liability Partnership
(Sherkate Nesbi)
7. The Consumers and Producers Cooperatives
(Sherkate Taavoni Towlid va Masraf)

Treatise I

JOINT STOCK COMPANIES (Sherkate Sahami)

1. Generalities

Article 21*

A Joint Stock Company is a company formed for commercial purposes; its capital is divided into shares, and the liability of its shareholders is limited to their shares.

Article 22

The name of a joint stock company will not include the name of any of the shareholders. In the name of the company the words "Joint Stock" must be mentioned.

Article 23

The shares may or may not be registered.

Article 24

The non-registered shares shall be issued in the form of shares payable to bearer. Their holder shall be recognized as its owner unless the contrary is established in accordance with the provisions of law.

Article 25

The transfer of registered shares must be reflected in the company's register. The shareholder must, either personally or through an agent acting on the

*Articles 21 through 93 deal with the Joint Stock Company which were repealed by the Legal Bill, comprising 300 Articles and 28 Notes, ratified on Tuesday, 15th March 1969 by the Special Joint Committee of both Houses of Parliament by virtue of the Act Governing Provisional Execution of the Bill Amending Certain Parts of the Commercial Code.

However, the said Legal Bill has granted a grace period of three years to the Joint Stock Companies already formed prior to the passage of such Legal Bill, to adapt themselves to the provisions therein contained.

The grace period has further been extended for another period of one year.

strength of a power-of-attorney, approve and sign such transfer in the said register.

Article 26

Share may be paid for in cash or otherwise. Shares not paid for in cash are shares which are paid for by other means in lieu of cash, such as factories, concession deeds, etc.*

Article 27

The shares as well as the bonds (if any) must be of equal nominal value.

Article 28

When the capital of a joint stock company does not exceed 200,000 rials, the shares or bonds must be not less than 50 rials each, and where it exceeds 200,000 rials, the shares or bonds must be not less than 100 rials each.

Article 29

As long as a joint stock company has not been formed, shares or provisional script (registered or not) cannot be issued. Any shares or provisional script delivered to a person before the formation of the company shall be null and void, and those who issued it shall be held jointly and severally responsible for any damage incurred by the holders of such bonds.

As long as 50% of the nominal value of the shares has not been paid, shares payable to bearer, or unregistered provisional script cannot be circulated.

Article 30

As long as subscribers of shares have not paid fifty per cent of the nominal value of their shares, they shall be liable for the payment of the balance, even if they have transferred their shares to a third party and such transferee has undertaken to pay the balance.

Article 31

Even after the payment of fifty per cent, the subscriber shall not be free from paying the balance unless the Articles of Association of the company have a provision therefor. In such case the transferee shall be responsible for the payment of the balance.

Article 32

Whoever has subscribed for shares and has not paid for them within the

* For the sake of brevity, shares which are not paid for in cash will be described as "non-cash" shares in subsequent Articles.

prescribed time will be liable for the payment of the shares and interest at the rate of 12% per annum for the delay.

Article 33

The Articles of Association of the company may stipulate other provisions with regard to persons mentioned in the foregoing Article. They may even stipulate that in the case of non-payment of the balance of the shares, the amount already paid shall become the property of the company free of charge and that the subscribers shall not have any claim on the shares subscribed for by them.

In such cases, however, the amount agreed to be paid by the subscribers must be claimed from them at least three times by sending letters with receipt attached, and one month must have elapsed from the date of the last letter.

In case the shares are payable to bearer, a notification must be published in the newspapers, instead of sending out letters.

The contents of this Article must, at the time the subscription is made, be expressly entered in the register of the company and signed at the foot by the subscriber.

Article 34

As long as the amount of the shares, whether registered or to bearer, has not been fully paid, the amount paid up must be reflected on the share itself. Besides, the company is required to state expressly on all deeds, publications, advertisements and other documents, printed or written, the amount of its capital in shares, and that part of the said capital that has actually been paid.

Article 35

Any joint stock company may, after a resolution of the general meeting of shareholders, called in conformity with Article 74 of the present Act, issue preferential shares, enjoying certain advantages and prerogatives over and above other shares. The creation of shares of this type is only possible if the Articles of Association of the company permit.

II. The Formation of a Joint Stock Company

Article 36

A joint stock company is constituted by a deed in duplicate. One of the copies will, according to the provisions of Article 50, be added to the directors' declaration and the other deposited at the company's head office.

Article 37

The Articles of Association of the company must particularly mention :

- i) The name and head office of the company.
- ii) The object of the company.
- iii) The duration, if formed for a limited period.
- iv) The amount of the company's capital, and the nominal value of the shares.
- v) The nature of the shares, mentioning whether payable to bearer or registered; the number of each kind of shares and the means whereby bearer shares can be turned into registered shares, provided such transfers are accepted in principle.
- vi) The composition of the board of directors and control.
- vii) The number of shares that the directors of the company must leave on deposit with the company.
- viii) Provisions concerning the holding of a general meeting, the right of shareholders to vote, and the way in which deliberations must be carried out and decisions taken.
- ix) Questions for the settlement of which there must be a special majority at the general meeting.
- x) The procedure by which the yearly accounts are to be settled and audited, as well as the mode of calculation and sharing of profits.
- xi) The procedure to be followed for amending the articles.

Article 38

A joint stock company cannot be formed unless the shareholders have subscribed the capital in full.

Where the shares or bonds do not exceed 50 rials, the shareholders must pay the full amount. In other case they must pay in cash at least one-third of the amount of the shares. In any case the amount paid must not be less than 50 rials.

Article 39

Any property to be delivered in exchange for non-cash shares must be delivered in full.

Article 40

As soon as the deed evidencing the subscription of the company's capital and the actual payment of one-third of the capital in cash is prepared, the promoters are required to call a general meeting of the shareholders. This meeting shall appoint the first directors of the company as well as the auditors mentioned in Article 62.

Article 41

Where a shareholder elects to receive a non-cash share or demands special

privileges for himself, a general meeting of shareholders will be convened, and in its first session will order a valuation of such non-cash shares to be made or will consider the reasons given for the privileges demanded. Definite approval of such valuation, or of the reasons given for privileges demanded, will not be given, and the formation of the company will not take place until a second and a separate general meeting is convened. In order that such valuation or reasons for privileges be approved in this second meeting, a report on them must be published and distributed to all shareholders at least five days before the meeting.

Approval of the above matters requires sanction by a majority of two-thirds of the shareholders present, and the general meeting is only legal if half the total number of shareholders, representing half the total capital subscribed in cash is present.

Shareholders who hold non-cash shares or who asked for special privileges, are not entitled to vote at the meeting when their non-cash shares or privileges are the subject of discussion. That portion of non-cash shares which is the subject of deliberations will not be considered part of the company's capital. If, at the second general meeting, one half of the total number of subscribers of shares in cash, representing half the capital in cash, is not present, the meeting will pass provisional resolution and will finally proceed in accordance with the last paragraph of Article 45.

If the non-cash contributions or the reasons for special privileges are not approved, any such subscriber can withdraw from the company.

Article 42

The approval of the matters mentioned in the above Article is no bar to ultimate action being taken against shareholders on the ground of deceit or fraud.

Article 43

When a company consists of individuals who own jointly and exclusively the non-cash shares, the rules set out in Article 41 relating to the valuation of non-cash contributions need not be observed.

Article 44

The promoters of the company are required to draft a declaration which, in conformity with Article 50, must be filed at the Registry Office. They must submit it with documents in support to the first general meeting, in order to have it verified and approved.

Article 45

The general meeting which considers the promoters' declaration and appoints

the first directors and auditors must consist of a number of shareholders representing at least one half of the company's capital.

If the number of shareholders present at the general meeting represents less than one half of the company's capital, its decisions are provisional only. In this case a fresh general meeting will be called and the provisional decisions taken by the first meeting will become binding, subject to their being confirmed by the subsequent general meeting, and provided that at least one month before the new meeting is called, these decisions are published twice at an interval of eight days in the local papers. At this new meeting the number of shareholders present must represent at least one third of the company's capital.

Note

The newspapers in which the above-mentioned announcements are published will be chosen and their name notified annually by the Ministry of Justice.

Article 46

The above-mentioned general meeting shall appoint the first directors and auditors of the company. The auditors are appointed for one year, and the directors for four years at most. The directors are eligible for re-election at the end of four years, unless the Articles of Association of the company provide otherwise. When the said Articles of Association stipulate, however, that their re-appointment need not be ratified by a general meeting, they must not be appointed for longer than two years.

Article 47

If the directors and auditors appointed by the general meeting agree to act, their acceptance shall be recorded in the minutes of that meeting and the company shall be formed from that very date.

III. Directors of a Joint Stock Company and Their Duties

Article 48

A joint stock company is run under the direction of one or more paid or unpaid representatives appointed from the shareholders who act as directors for a limited period and who are liable to dismissal.

Article 49

When several directors are appointed they are required to elect one of their members as managing director. The said managing director and individual directors may, if permitted by the Articles of Association of the company, ap-

point an outsider, but they themselves will be held responsible for the acts of such outsider.

Article 50

As proof that the capital has been subscribed and cash actually paid up by the shareholders, the managing director of the company must certify a declaration to that effect, which shall be deposited and registered with the Registry Office in the place where the head office of the company is located. To this declaration must be attached a list of shareholders, showing the amount of capital paid up, a copy of the Articles of Association, and a duplicate of the company's memorandum.

Article 51

The responsibility of the managing director towards the shareholders is that of an attorney towards his principal.*

Article 52

Directors must hold shares to the extent laid down in the Articles of Association. These shares are a security for any damage caused to the company by the administrative acts of the directors, jointly or severally. The said shares are registered shares and are not transferable. They must be deposited in the company's safe, and the fact that they are not transferable must be stamped on them.

Article 53

The directors of the company may not, without the authority of a general meeting, participate directly or indirectly in any business transactions with the company or for its account. If authorized, they must submit a special statement of such transactions every year to the general meeting.

Article 54

The directors of every joint stock company must prepare an abstract of the company's assets and liabilities half-yearly and hand this statement to the auditors.

Article 55

The directors of each joint stock company must in conformity with Article 9 of the present Act, make an inventory as well as a statement of its assets and liabilities.

The inventory, as well as the balance sheet and profit and loss account of the

*Please refer to Articles 666 to 673 of the Civil Code of Iran.

company, must be in the hands of the auditors at least forty days before the general meeting for presentation to the said meeting.

Article 56

During the fortnight preceding the holding of the general meeting, every shareholder may examine at the head office of the company the inventory and list of shareholders, and obtain a copy of the balance sheet which must include a synopsis of the inventory and the auditor's report.

Article 57

A minimum of one-twentieth of the company's net profit must be set aside yearly for the creation of a reserve fund.

When the reserve fund reaches one-tenth of the company's capital this transfer to reserve will be optional.

Article 58

In case of loss of half the company's capital the directors are bound to call a general meeting of all shareholders, with a view to deciding whether or not the company shall be wound up.

The decision of the meeting must, in every case, be made public.

Article 59

If contrary to the foregoing Article, the company's directors have not called a general meeting, or the meeting if it is held is not in conformity with the regulations, any interested party may apply to the competent court of justice for the winding up of the company.

Article 60

If one or more shareholders, whose shares represent in all at least one-fifth of the company's capital request in writing and give their reasons for calling an extraordinary general meeting, such a meeting must be called.

Article 61

The directors are responsible, in accordance with the rules of common law, to the company or to a third party for any infringements of the provisions of this Act, and for any errors they may have been guilty of in their management, specially where they have distributed fictitious dividends or have not prevented such distribution.

IV. Auditors and Their Duties

Article 62

The annual general meeting will appoint one or more auditors. The said auditors, who may be chosen from outside the shareholders, will be entrusted with the drafting of a report to be read at the next annual meeting. The report will deal with the general position of the company, as well as with the balance sheet and the accounts submitted by the directors.

In the absence of this report, any decisions relating to the passing of the balance sheet and the directors' accounts will be null and void.

Should the general meeting have failed to appoint auditors, or if one or more of the auditors appointed have been unable to submit a report or refused to give one, the President of the Court of First Instance in the place where the head office of the company is situated, at the request of any interested party and after having summoned the directors to be present, will appoint fresh auditors in stead of those who failed or refused to submit a report.

Article 63

For three months prior to the date fixed by the Articles of Association for the calling of the general meeting, the auditors have the right to examine the books and to scrutinize the company's transactions.

They may, if necessary, call the general meeting immediately.

Article 64

The extent and the scope of the auditors' responsibility is the same as that of an attorney towards his principal.*

V. General Meeting of Joint Stock Companies

Article 65

A general meeting must be held at least once each year at the time fixed by the Articles of Association.

Article 66

The Articles of Association will state the number of shares a shareholder must hold, either as owner or by proxy, to be admitted to the general meeting.

Article 67

The number of votes to which each shareholder will be entitled in proportion to the number of his shares will be fixed by the Articles of Association.

* Please refer to Articles 866 to 873 of the Civil Code of Iran.

Article 68

Except for the provisions to the contrary in the Articles of Association, there will be no distinctions concerning the right to vote at the general meeting between ordinary shareholders and those holding preferential shares.

Article 69

The shareholders who do not hold a sufficient number of shares to allow them to vote at the general meeting may combine, so that the number of their shares will be sufficient to assure them a vote, and they may appoint one of their number to vote at the general meeting.

Article 70

All shareholders, irrespective of the number of their shares, may attend the general meeting called, in accordance with Article 41, to examine the subscriptions to the capital and the privileges enjoyed by the shareholders. They may also attend the meetings convened, in accordance with Article 45, to appoint the first directors and auditors and to certify the declarations of the promoters.

Article 71

Except in cases provided for in Articles 41, 45 and 74, the general meeting must be composed of a number of shareholders representing at least one-third of the company's capital. If this quorum is not present at the first meeting, a new general meeting must be called in accordance with the company's Articles of Association, and the resolutions passed by this meeting will be final, even though the above-mentioned quorum is not present.

Article 72

Resolutions at the general meeting must be passed by a majority of votes.

Article 73

Should the general meeting of shareholders pass such resolutions concerning the rights enjoyed by a special class of shares, which will modify the said rights, such a resolution will only be effective after ratification at a special meeting by the shareholders whose rights are affected. In order to make the resolutions passed by such a special meeting valid, the shareholders present must own more than half the shares under discussion.

Article 74

At the general meeting called to extend the life of the company, or to wind

up before the time appointed has expired, or to make any other alteration in the Articles of Association, a quorum of shareholders representing more than three-quarters of the company's capital must be present. If this quorum is not present, a second meeting may be called. One month at least before the calling of this second meeting, the minutes of the previous meeting and resolutions passed thereat must be published twice at an interval of eight days in one of the local newspapers appointed each year for this purpose by the Ministry of Justice.

There must be present at the second general meeting a quorum of shareholders representing at least one half the company's capital. If this quorum is not present, a third general meeting may be summoned, provided the formalities prescribed above are complied with. The third meeting will be allowed to pass resolutions, if the number of shareholders present represent at least one-third of the company's capital.

At each of the above-mentioned meetings resolutions will be passed by a majority of two-thirds of the voters present. All shareholders, irrespective of the number of shares they own, will have the right to be present at these meetings. They have one vote per share, even if the Articles of Association provide otherwise.

No general meeting has the power to alter the nationality of the company. The liabilities of the shareholders cannot be increased by any majority vote.

Article 75

A record will be kept of the names, addresses and the number of shares held by shareholders present at such general meetings. This record, after being certified by the Board, will be kept at the head office and may be consulted by any one wishing to do so.

VI. On Conversion of Shares

Article 76

If the company wishes, in accordance with the provisions of its Articles of Association, to convert its bearer shares into registered shares, it must publish a notice to that effect and grant shareholders a respite of at least six months in which to change their shares for new ones.

Article 77

The notification referred to in the foregoing Article must be published twice, at an interval of ten days, in the Gazette of the Ministry of Justice, and in one of the widely circulated newspapers appearing in the town where the company is registered. Where the head office is outside Tehran, the notice must

also be published in one of the Tehran daily papers appointed by the Ministry of Justice each year for that purpose. The six months will run from the date of first publication in the Official Gazette.

Article 78

Any shareholders not having converted his shares within the time limit mentioned in Article 76 will lose the right to do so. The company will then have the right to sell to third parties, by auction, the new shares issued in lieu of the unconverted ones.

Article 79

The price of shares sold in accordance with the foregoing Article will be deposited at the company's head office or in the Banque Mellie Iran. If, within a period of 10 years from the date of sale, the shareholder does not return his shares and claim the amount deposited as above, his right to claim the deposit will be barred by statute of limitation. The said deposit will be considered as unclaimed money, and the managing directors must pay it over to the competent authorities. Any managing director failing to carry out this obligation will be liable to pay three times the amount mentioned above.

Article 80

When the company wishes to convert its registered shares into bearer shares it must publish an announcement to this effect as stated above. If, within the prescribed limit, which must not be less than two months, the shareholders do not convert their registered shares into bearer share, the registered shares actually in their hands will be considered as cancelled and the new shares deposited in their names at the company's head office.

Article 81

When the company wishes to convert provisional scrip it has issued into shares, the non-registered provisional scrip will be dealt with in accordance with Articles 76, 77, 78 and 79 and the registered provisional scrips in accordance with Article 80.*

* Please refer to footnote on Page 7.

VII. The Invalidation of a Joint Stock Company or Its Deeds and Resolutions

Article 82

Any joint stock company failing to comply with Articles 28, 29, 36, 37, 38, 39, 41, 44, 45, 46, 47 and 50 of the present Act will be declared null and void. The partners (shareholders), however, are not discharged from liability to third parties by reason of this annulment.*

Article 83

If in accordance with the foregoing Article, the court decrees that the company itself, or its deeds and resolutions are void, the promoters responsible for nullity, as well as the auditors and directors who were in charge when the cause of nullity arose, or immediately after, and who have failed in their duty, are jointly and severally responsible towards shareholders and third parties for the damage resulting from the invalidation.

The same responsibility may attach to shareholders whose non-cash shares have not been valued and approved, or where they have demanded privileges which have not yet been approved.

Article 84

The proceedings for annulment of the company of its deeds and contracts cannot be heard by the court, if, before the lodging of the petition, the cause for invalidation has ceased to exist.

Article 85

After the expiration of one year from the date when the invalidation ceased to exist, should any third party claim damage by reason of the invalidation, such claim will not be admitted by the courts.

Article 86

If, to prevent the nullity, a special general meeting is called and the partners (shareholders) are notified of the meeting in accordance with the Articles of Association, nullity proceedings will not be entertained by the court from the date of notification, unless the meeting has failed to remove the nullity.

Article 87

If no action is taken for invalidation and damages within 10 years of the date of such invalidation, the court will no longer admit such action.

* Please refer to footnote on Page 7.

Article 88

Dividends cannot be reclaimed from shareholders unless the distribution was made without the preparation of a statement of accounts, or contrary to the results shown by such a statement. In such cases, claim for refund can be made within five years only. Period of limitation runs from the date of distribution of such dividends.

VIII. Penal Provisions

Article 89

Whoever issues shares or bonds of a company formed contrary to the provisions of Articles 28, 29, 36, 37, 38, 39, 44 and 50 of the present Act is liable to a fine from 500 to 10,000 rials besides having to pay damages to the company or to individuals. In cases where the act is also criminal, as determined by Article 238 of the Penal Code, the penalty provided in the said Article will also be applied to the offender. (1)

Article 90

The above penalty will likewise apply to those who falsely represent themselves as holders of shares or bonds and attend the general meeting to take part in the voting, as well as to those who entrust strangers with shares for a fraudulent purpose. In cases provided for by the present Article, the offender may be imprisoned for one to six months, in addition to the fine.

Article 91

Whoever knowingly negotiates shares or bonds contrary to Articles 28, 29, 38 and 39 or whoever is party to such negotiation, or whoever issues to the public such shares or bonds, shall be liable to a fine of 500 to 10,000 rials.

1) Article 238 of the Penal Code also deals with swindle and fraud, which reads as follows:

"Anyone who resorts to fraudulent means in order to acquire a part from the property of another or deceitfully makes people believe in the existence of fictitious companies, business firms or factories and so on, or deceives them on the false pretention for having fictitious authorities or goodwill or makes them hopeful in respect of the things which have not happened or adopts a forged name, title or position and acquires by one of the said methods a sum of money or document or a ticket or a receipt or a letter of discharge and so on and in this way appropriates a portion from the properties of another, shall be sentenced to simple imprisonment from six months to two years or payment of a fine ranging from 500 to 5,000 rials or both. If he commences such an act but has not completed it, he shall be sentenced to simple imprisonment from two months to one year or payment of a fine from 200 to 2,000 rials. In case of repetition of the crime, the perpetrator may be prohibited to reside in a certain place for a period of one to five years."

In addition to the penalties provided by the present Article, the offender may also be imprisoned in accordance with Article 238 of the Penal Code.(1)

Article 92

The following persons are considered swindlers: (2)

- i) Any person who, with intent to defraud, either claims that shares have been subscribed for, or that the price of shares has been paid, or who fraudulently advertises to that effect, or makes fraudulent statements with the object thereby of inducing others to take shares or to pay for shares, whether such acts have been effective or not.
- ii) Persons who, with a view to obtaining payment, or subscription for shares, falsely and fraudulently represent others as connected with a company.
- iii) Directors who, without any statements of accounts, or on the authority of a fraudulent statement, distribute fictitious profits to shareholders.

IX. On Dissolution or Winding Up of a Joint Stock Company

Article 93

A joint stock company must be dissolved:

- a) When the company has carried out the task for which it has been formed, or should the carrying out of such a task become impossible.
- b) When the company has been formed for a fixed period and that period has expired.
- c) In case of bankruptcy of the company.
- d) When a general meeting passes a resolution to that effect.

Treatise II

LIMITED LIABILITY COMPANIES (Sherkat Ba Massouliat Mahdood)

Article 94

A Limited Liability Company is a company formed by two or more persons for the purpose of trading, when the company's capital is not represented by shares or bonds, but when each of the partners is responsible for the responsibilities and obligations of the company to the extent of his contribution only.

Article 95

In the company's title the phrase "limited liability" must appear, otherwise the company will, so far as third parties are concerned, be considered as a

(1), (2) Please refer to footnote on Page 20.

Article 194

If a cooperative company, whether for producers or consumers, is formed in conformity with the general rules governing joint stock companies, the minimum value of shares or bonds will be 10 rials, and no member will be entitled to more than one vote at the general meeting.

CHAPTER TWO

On Provisions Concerning Registration of Companies and
Publication of Articles-of-Association and Articles-of-Memorandum

Article 195

Registration of all companies and/or partnerships mentioned in the present Act is compulsory, in accordance with the law of company registration.

Article 196

Statements and documents required for the registration of companies will be determined by the by-laws issued by the Ministry of Justice.

Article 197

In the first month of formation of every company or partnership an abstract of its memorandum and supplements will be published in conformity with a by-law of the Ministry of Justice.

Article 198

If, for non-observance of the provisions of the two preceding Articles, a company is declared invalid, none of the shareholders can take advantage of this invalidity so far as third parties, with whom they were dealing, are concerned.

Article 199

If a company has branches in several places, the provisions of Articles 195 and 197 must, in conformity with the by-laws of the Ministry of Justice, be carried out separately in each of the places.

Article 200

Whenever resolutions are passed altering the Articles-of-Association, extending the life of the company, dissolving the company (even where this dissolution takes place by reason of the expiration of the term of the company), ascertaining the manner in which the accounts must be settled, change of partners and the change of the firm's name, the provisions of Articles 195 and 197 must be complied with.

Article 201

In all deeds, invoices, announcements, publications and other documents (printed or written) issued by the companies mentioned in the present Act, with the exception of cooperative companies, the amount of the company's capital must be expressly stated. Where the company's capital is not fully paid, the amount paid must be expressly stated. Any company violating this provision will be fined from rials 200 to 3,000.

Note

Foreign companies trading in Iran through a branch or by means of a representative will also be, so far as their deeds, invoices, announcements and publications in Iran are concerned, bound by the provisions of the present Article.

CHAPTER THREE

On Liquidation of Companies (Partnerships)

Article 202

Except in bankruptcy, which is subject to the provisions relating thereto, the liquidation of companies, after their dissolution, will take place in conformity with the following Articles.⁽¹⁾

Article 203

In case of general partnerships, proportional liability partnerships, simple partnerships and joint stock companies, the director or directors shall carry out the liquidation proceedings, unless the general partners appoint other persons for this purpose chosen either from among themselves or outside the company or partnership.

Article 204

When one or more general partners ask for the appointment of special persons to carry out the liquidation proceedings, and when the other general partners do not agree to this request, the Court of First Instance will appoint the liquidators.

Article 205

Whenever persons other than directors of a company are appointed to carry out the liquidation proceedings, their names must be registered at the Registration Office and published.

(1) Part Eleven of this book deals with bankruptcy.

Article 206

In simple partnerships or joint stock partnerships, limited partners have a right to appoint one or two persons to supervise the liquidation proceedings.

Article 207

The Liquidator's function is to wind up the affairs of the company, to discharge its obligations, to collect its debts and to distribute the assets in the manner provided for by Articles 208, 209, 210, 211 and 212.

Article 208

If, in order to fulfil existing obligations, it is necessary to undertake fresh business, the Liquidator will be empowered to do so.

Article 209

Liquidators have the right to bring or defend actions in the company's name, either in person or by attorney.

Article 210

Except when arbitration is compulsory by law, liquidators have only the right to compromise and to appoint arbitrators, if the responsible partners authorize them to do so.

Article 211

Any of the company's assets not required for the liquidation will be temporarily divided between the partners (shareholders), but the liquidators must deduct therefrom liabilities not yet due, or amounts in dispute between the partners.

Article 212

The liquidators shall settle the accounts between the partners and divide the profits and losses.

In case of dispute as to distribution, the Court of First Instance will decide.

Article 213

In joint stock companies, limited liability companies and cooperative companies, the responsibility for liquidation is borne by the directors, unless the Articles-of-Association have provided otherwise, or unless a majority at the general meeting decides to the contrary.

Article 214

In joint stock companies, limited liability companies and cooperative companies, the rights and duties of liquidators are determined by Article 207, but with this difference that (except in case of compulsory arbitration) liquidators have the right to compromise and to appoint arbitrators only when the Articles-of-Association or the general meeting have conferred that right upon them.

Article 215

In companies referred to in the preceding Article, the distribution of the company's assets between the partners (shareholders) can only be made either during liquidation proceedings or after, when three announcements to that effect have previously appeared in the Official Gazette and in another paper, and when one year has elapsed since the publication of the first announcement in the Official Gazette.

Article 216

For breach of the provisions of the foregoing Article, the liquidators will be liable for any losses suffered by the creditors who have not been paid.

Article 217

The books of every dissolved company will be kept for ten years dating from the completion of the liquidation, in a place specified by the Registrar of Companies.

Article 218

Every company is free to fix by its Articles-of-Association other means of liquidation; these means, however, must not in any case, be contrary to the provisions of Articles 207, 208, 209, 210, 215, 216 and 217 or the last part of Article 211.

CHAPTER FOUR

Miscellaneous Provisions

Article 219

In cases where the partners or their heirs are legally responsible to third parties, the right of the latter to bring an action against the former, arising out of the transactions of the partnership, is barred after the expiry of five years. The period of limitation starts running from the date when dissolution of the company or withdrawal of a partner or his removal from the company

has been registered with the Registry Office and published in the Official Gazette.

In case the demand is due after registration and publication, statute of limitation starts running from the date when the creditor becomes entitled to make such demand.

Note

Any claim which by its nature is liable to a shorter period of limitation or, according to the present Act, a longer period of limitation has been prescribed therefor, shall not be subject to the provisions of this Article.

Article 220

Every present or future Iranian company or partnership engaged in commercial transactions which does not bring itself into line with one of the companies or partnerships mentioned in the present Act, and does not comply with the provisions relating to such company, will be recognized as a general partnership and be subjected to the provisions relating thereto.

Every Iranian company mentioned in the present Act, and every foreign company bound to register by the Companies Registration Act ratified in Khor-dadmah 1310, must, in all its deeds, invoices, announcements and publications, printed or written in Iran, state the number under which it has been registered in Iran, otherwise it will be liable to a fine from rials 200 to 2,000. This fine is in addition to the penalty provided for non-registration by the Companies Registration Act.

Article 221

If a company has issued debentures or bonds which, in accordance with its Articles-of-Association or by resolution of a general meeting, must be redeemed by casting lot, and if the dividends or interests due thereon have been paid before the debentures or bonds have been redeemed, the company cannot, when the value is redeemed, withdraw the dividends or interests already paid.

Article 222

Every trading company may provide in its Articles-of-Association that the original capital may be increased by further subscriptions or contributions from the original partners (shareholders), or by the admission of new partners (shareholders), or decreased by return of capital. The Articles-of-Association will state expressly the minimum below which the capital cannot be decreased.

This minimum must not be fixed at below one tenth of the original capital of the company.

PART FOUR

Bill of Exchange, Promissory Note and Cheque

CHAPTER ONE

Bill of Exchange

Treatise I

Form of Bill of Exchange

Article 223

Besides bearing the signature or seal of the drawer, a Bill of Exchange must contain:

- i) The words "bill of exchange."
- ii) The date when drawn (day, month and year).
- iii) The name of the drawee.
- iv) The amount in full.
- v) The date of payment (due date).
- vi) The place where payment is to be made, whether it be the domicile of the drawee or other place.
- vii) The name of the person to whom, or to whose order the bill of exchange is to be paid.
- viii) An indication whether it is the first, second, third, etc., of exchange.

Article 224

A bill of exchange can be drawn to the order of a third party, or to the order of the drawer himself.

Article 225

The date on which a bill of exchange is issued as well as the amount should be written in words.

If the amount is written more than once in words and there is a difference, then the smaller amount will be the amount of the bill. If the amount is written in words and in figures and there is a difference, then the amount written in words is the amount of the bill.

THE COMMERCIAL CODE

TREATISE 1

JOINT STOCK COMPANIES

RATIFIED BY BOTH HOUSES OF PARLIAMENT

ON 15th MARCH 1969

Translated

and

Published

by

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FOREWORD

The legal bill amending Treatise I of the commercial Code was ratified on 24th Esfand 1347 (15th March 1969) by the Special Joint Committee of both Houses of Parliament. This enactment, governing the regulations applicable to joint stock companies in Iran, is an important piece of legislation producing far-reaching changes for the companies affected.

International Consultants Association, which has produced the English language translation contained in this publication, considered that a precise translation was urgently required for the information of English speaking people and foreign concerns in Iran. We express the hope that this translation will meet with the approval of the persons and foreign concerns for whom it is published. It is the desire and intention of International Consultants Association to furnish other English language translations of all new enactments affecting foreign concerns in Iran.

This translation has been checked by qualified authorities who have found it to be accurate. Nevertheless, the publishers realise that errors of detail are possible and would be extremely grateful for comments and criticism from persons reading this translation, so that such errors may be corrected in future printings.

In conclusion the publishers wish to express their appreciation and gratitude to all persons who played a part in the preparation of this publication.

Musa Sabhi

The Commercial Code

TREATISE 1

COMPANIES LIMITED by SHARES (Joint Stock Companies)

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CHAPTER 1

DEFINITION AND FORMATION OF JOINT STOCK COMPANIES

ARTICLE 1. A joint stock company is a company whose capital is divided into shares and the liability of whose shareholders is limited to the par value of the shares respectively held by them.

ARTICLE 2. A joint stock company is considered as a trading company, regardless of the fact that the operations conducted by it are not of a trading nature.

ARTICLE 3. The members of a joint stock company must not be less than three.

ARTICLE 4. Joint stock companies fall under two distinctive categories. The first category consists of a company whose promoters secure a portion of its share capital by way of transferring shares to the public and such a company is called a public company. The second category consists of a company whose share capital, in its entirety, is secured by its promoters at the time of its formation and such a company is called a private company.

Note: In joint stock companies the phrase "Public Joint Stock Company" or "Private Joint Stock Company" should appear immediately either before or after the name and style of the company as the case may be and, moreover, the said phrase should be indicated in a conspicuous place and in legible printing on all letter-heads, publications and notices of the company.

list shall be prepared in which the full identity, domicile, number of shares and number of votes of each attendant shall be reflected and such list shall be signed by the said attendants.

ARTICLE 100. In the notice calling the shareholders to convene a general meeting, the agenda, date, place of meeting, the hour and full address must be given.

ARTICLE 101. General meetings shall be managed by a directorate composed of a chairman, secretary, and two supervisors. Unless otherwise provided for in the Articles of Association, the meeting shall be presided over by the chairman of the board of directors, except in cases where the election or dismissal of all or a number of the directors is included in the agenda. The supervisors will be elected from among the shareholders of the company but it is not a requirement for the secretary of the meeting to be shareholder of the company.

ARTICLE 102. In all general meetings, the attendance of the attorney or legal representative of a shareholder and in the same manner the attendance of the representative or representatives of a legal entity, provided they produce documentary evidence establishing their position as proxy or representative, will be considered as the attendance of the shareholder.

ARTICLE 103. In all cases where, in this Act, "the majority of votes" is mentioned, it is meant the majority of votes of those present at the Meeting.

ARTICLE 104. If all items of business cannot be transacted at a meeting, the directorate of the meeting, with the approval of the general meeting, shall declare a recess and shall fix the date of the next meeting which shall not be longer than two weeks later. The prolongation of

such a meeting shall not require a notice of call and publication. A quorum of such a meeting shall be established with the same quorum as the first meeting.

ARTICLE 105. A minute will be made of the deliberations and resolutions passed at a general meeting by the secretary of the meeting, which will be signed by the directorate, and a copy thereof shall be kept at the principal office of the company.

ARTICLE 106. When the resolutions of a general meeting cover any of the following items, a copy must be forwarded to the office of the Registrar of Companies :—

- (1) The election of directors and/or inspector or inspectors.
- (2) The approval of a balance sheet.
- (3) A decrease or increase of capital and any change in the Articles of Association.
- (4) Winding up the company and the manner of liquidation.

CHAPTER 6

BOARD OF DIRECTORS

ARTICLE 107. A joint stock company is managed by a board of directors, appointed from among the shareholders, who are wholly or pro tanto subject to removal. The number of directors of a public joint stock company must not be less than five.

ARTICLE 108. The directors of a company are elected either at the statutory meeting or at ordinary general meetings of shareholders.

ARTICLE 109. The terms of office of the directors are fixed by the Articles of Association.

ARTICLE 110. Legal entities may be elected as directors of a company. In this case, the legal entity shall hold the same civil res-

ed director or directors who sanctioned such transactions shall be jointly responsible to indemnify the company.

ARTICLE 131. If transactions mentioned in Article 129 are performed in the absence of approval of the board of directors and the ordinary general meeting does not confirm such transactions, then they will be rescindable. The company shall be entitled to apply to the court and obtain an injunction of rescission of such transactions within three years from the date of their conclusion and, if concluded secretly, within three years from the date they were discovered. In any case, the responsibilities of the interested director or directors or managing director vis-a-vis the company remain intact. The decision of rescission rests with general meeting which will make a decision after having heard the report of the inspector on the failure to perform the formalities necessary for such transactions. An interested managing director shall not be allowed to participate in the vote. The general meeting mentioned in this article shall be convened upon the call of the board of directors or the inspector.

ARTICLE 132. The managing director and the directors — with the exception of legal entities — will not be allowed to obtain any loan or credit facilities from the company; the company will not be allowed to guarantee or assume the obligation of payment of their debts. Such transactions are void, ipso-facto. In the case of banks and financial and credit companies, the transactions mentioned in this article are permissible, however, provided they are performed under prevailing normal terms and conditions. The prohibition mentioned in this article shall be applicable to the natural persons who represent legal entities at board meetings, moreover, the said provisions shall be applicable to the spouse,

father, mother, ancestors, children, grand children, brothers and sisters of the persons mentioned in this article.

ARTICLE 133. The directors and the managing director shall not be allowed to conclude transactions identical to the transactions of the company which are considered to compete with the company. If any director, acting in contradiction of the purport of this article, inflicts a loss to the company by his violation, he shall be held responsible to indemnify the company's losses. The losses mentioned in this article purport actual losses incurred of reductions in profit.

ARTICLE 134. An ordinary general meeting may, with due observance of the actual time spent by the unsalaried directors at meetings of the board of directors, determine a fixed attendance fee proportional to the number of hours spent by each director. In addition, if so allowed by the Articles of Association, the general meeting may allocate a portion of the net profit of the company to be paid to the directors as bonus.

Unless herein expressly mentioned, the board of directors shall not be allowed to obtain any amount of money from the company in form of salary, bonus or remuneration on a recurring or non-recurring basis by virtue of the office of director.

ARTICLE 135. All actions and measures taken by the directors, or the managing director shall be valid vis-a-vis a third party and the non-performance of formalities on their appointment will not be allowed to invalidate actions or measures taken by them.

ARTICLE 136. In the event of expiry of the terms of office of directors, their responsibilities for the affairs and management of the company shall continue until such time as new directors are appointed. If

the authorities responsible for calling general meetings fail to discharge their functions, any interested person may request the office of the Registrar of Companies to arrange the convening of a general meeting for the purpose of electing directors.

ARTICLE 137. The board of directors is bound to prepare every six months a summary of the assets and liabilities of the company and submit the same to the inspectors of the company.

ARTICLE 138. After the expiry of the fiscal year, the board of directors is bound to call the annual meeting of the company within the period stipulated in the Articles of Association for approving the financial operations of the preceding year, the balance sheet and the profit and loss account of the company.

ARTICLE 139. During fifteen days preceding the convening of a general meeting, any shareholder may, at the principal office of the company, make a copy of the balance sheet, profit and loss account, the report of the operations of the directors and the report of the auditors of the company.

ARTICLE 140. The board of directors is bound to set aside annually one-twentieth of the net profit of the company for the creation of a legal reserve fund. When the legal reserve fund has reached one-tenth of the company's capital, the transfer to the reserve will be optional. If the capital is increased, then the transfer of one-twentieth of the net profit shall continue until the legal reserve fund has reached one-tenth of the increased capital.

ARTICLE 141. In the case of the loss of a minimum of half the company's capital, the board of directors is bound to call an extraordinary general meeting immediately, with a view to deciding whether the com-

pany shall be wound up or shall continue its operations.

If the said general meeting turns down the winding-up of the company with observance of the regulations laid down in Article 6 of this Act, the company's capital will be decreased. If, contrary to the foregoing article, the board of directors have not called a general meeting or if the meeting is not convened in conformity with the regulations, any interested person may apply to the competent court for the winding-up of the company.

ARTICLE 142. The directors and the managing director of a company are responsible either individually or jointly, as the case may be, vis-a-vis the company and third parties in respect of any infringement of legal regulations or the provisions stipulated in the Articles of Association or the minutes of general meetings. The court shall determine the scope of responsibility of each individual for indemnity purposes,

ARTICLE 143. If a company goes bankrupt or, subsequent to its winding-up, it becomes evident that the assets of the company are not adequate for the settlement of its liabilities, then the competent court may, upon the request of any interested party, condemn any of the directors or the managing director of the company, to whom, in the opinion of the court, the bankruptcy or insolvency of the company is in any manner whatsoever attributable because of their violations, to pay such portion of the liabilities which cannot otherwise be recovered from the assets of the company either jointly or severally as the case may be.

CHAPTER 7

INSPECTORS

ARTICLE 144. The ordinary general meeting will each year elect one or more inspectors to discharge their functions in compliance with

shares and the nature of the decreased amount of each share, the board of directors should inform the shareholders in a written statement. A notice shall appear in the newspaper which publishes the notices of the company and, in the case of holders of registered shares, such notice shall be forwarded to them by registered mail.

ARTICLE 197. The notice mentioned in Article 196 shall contain the following information :—

- (1) The name and the address of the principal office of the company.
- (2) The capital of the company before the resolution for the decrease of capital is passed.
- (3) The amount of decrease applicable to each share (in other words, the par value of each share after the decrease of capital).
- (4) The manner of repayment, the period of grace allowed for repayment and the place of repayment.

ARTICLE 198. A company is forbidden to redeem its own shares.

CHAPTER 9

WINDING-UP AND LIQUIDATION

ARTICLE 199. A joint stock company must be dissolved :—

- (1) When the company has carried out the task for which it has been formed or if the carrying out of a such task become impossible; or.
- (2) When a company has been formed for a fixed period which ... the period has been extended before suc

expiry date : or.

- (3) When it becomes bankrupt; or.
- (4) When an extraordinary general meeting has passed, for any reason whatsoever, a resolution to this effect; or.
- (5) When a final judgement is issued by the courts of justice.

ARTICLE 200. In the case of bankruptcy, the dissolution of a company shall be subject to bankruptcy proceedings.

ARTICLE 201. In the following cases, any interested person may apply to the court for the winding-up of a company :-

- (1) When no measures are taken with a view to carrying out the objectives of the company within one year after formation or, if there is a break in the activities of the company, for more than one year.
- (2) When a general meeting of the company is not held for the purpose of approving the accounts of each of the previous fiscal years up to ten months after the period fixed in the Articles of Association.
- (3) When the position of all or a number of directors of the company or that of the managing director of the company has remained vacant for a period exceeding six months.
- (4) In the case of sections (1) and (2) of Article 199, when an extraordinary general meeting is not held or, if held, no resolution is passed for the purpose of winding up the company.

ARTICLE 202. Pursant to sections (1), (2) and (3) of the foregoing Article, the court may grant an extension to the authorities empowered to act on behalf of a company, either by virtue of its Articles of Associa-

ion or by virtue of this Act, not exceeding six months, for them to remove the causes which gave rise to the winding-up of the company.

If such causes cannot be removed, then the court, will declare the company bankrupt.

ARTICLE 203. The liquidation of the affairs of a company will take place in accordance with the provisions of this Act with the exception of bankruptcy which will be subject to bankruptcy proceedings.

ARTICLE 204. The liquidation of the affairs of a company is vested in the directors of that company unless otherwise provided for in the Articles of Association or if an extraordinary general meeting of the company adopts a different arrangement.

ARTICLE 205. If for any reason whatsoever, a liquidator is not appointed or, if appointed, he fails to perform his functions, then any interested party may apply to the court of justice for the appointment of a liquidator. In cases where the winding-up of a company takes place according to a verdict of the court of justice, the said court shall appoint a liquidator in its bankruptcy verdict.

ARTICLE 206. A company, with immediate effect after its winding-up, is considered to be a company in liquidation and the phrase "in liquidation" must appear after the name and style of the company and, in the same manner, the name of the liquidator or liquidators must appear in all letter-heads and publications of that company.

ARTICLE 207. The address of the liquidator or liquidators shall be the same as the principal office of the company unless, by a resolution of an extraordinary general meeting or by a decision of the court of justice, another address is adopted.

ARTICLE 208. The legal entity of a company shall remain in full

force and effect until the liquidation is completed and the liquidator or liquidators are required to complete the liquidation, settle the liabilities, collect the amounts due to the company and distribute the assets of the company. If, for the purpose of carrying out the obligations of the company, it becomes necessary to enter into new transactions, the liquidators may do so.

ARTICLE 209. The office of the Registrar of Companies must be notified by the liquidator(s) of the resolutions concerning the dissolution and the names and addresses of the liquidators, with due observance of the provisions of Article 207, within five days for the purpose of registration proceedings and the publication of this state of affairs in the Official Gazette and in the newspaper in which all notices of the company are published.

During liquidation proceedings, the same newspaper, which had been designated by the last general meeting of the company held before the dissolution of the company, shall be used.

ARTICLE 210. Dissolution of a company, so long as it is not registered and announced, shall not affect third parties.

ARTICLE 211. Immediately after the appointment of the liquidators, the powers and authorities of the director or directors of the company will be extinguished and the liquidation starts. The liquidators are required to take delivery of all assets, books and records pertaining to the company and proceed with the liquidation of the company.

ARTICLE 212. The liquidators are considered to be representatives of the company and they shall possess all necessary powers to facilitate the liquidation of the company, including instituting law-suits and referring cases to arbitration and compromise. They are further authorized to hire barristers to institute law-suits and defence proceed-

RESPONSE TO MANTA DEFENDANT'S REQUEST TO ADMIT
(pp. 289a-292a)

289a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IRANIAN SHIPPING LINES, S.A., a
corporation,

Cross-Claimant,

-against-

PETER MORAITES, et al.,

Impleaded Defendants.
-----x

: 72 Civ. 1392 (HFW)

: RESPONSE TO MANTA
DEFENDANTS' REQUEST
: TO ADMIT

:

:

Cross-Claimant Iranian Shipping Lines, S.A., in response
to the Request to Admit of the Manta Defendants, states as follows:

1. Admitted

2. Admitted

3 (a) and (b). Admitted except that it is also governed
by and subject to the legal customs and usages which then and
there prevailed.

4. Admitted

5 (a), (b) and (c). Admitted

6 (a), (b), (c), (d) and (e). Admitted

6 (f). Admitted, except denied that it was relative
specifically to the organization or reorganization of ISL.

6 (g). Admitted

6 (h). Admitted

7 (a), (b) and (c). Admitted

7 (d). Denied but admitted that there was no compliance with the ICC requirements

7 (e). Denied as to any declaration or proof other than the 5 declarations which comprise Exhibit C (to Exhibit 2), executed December 23, 1964, and as to those 5 declarations ISL has no information in contradiction to Soutoudeh's Affidavit

8 (a) and (b). Admitted

9 (a), (c), (d) and (e). Admitted

9 (b). ISL can neither admit nor deny this request

because the information known or readily obtainable by ISL is insufficient to enable it to do so.

10 (a). Admitted but deny they were solely governed by said Iranian Commercial Code.

10 (b), (c), (d), (e), (f i) and (h). Admitted

10 (f ii) and (g). Admitted except as permitted by the prevailing usages and customs.

10 (i). Denied

10 (j). Denied

10 (k), (l), (m), (n), (o) and (p). Admitted

11 (a) and (b). Admitted for the period 1962 through 1966

12. Admitted

13. Admitted except deny that John L. Manta and George Manta had any interest in the said vessels, direct or indirect,

except through ISL and Icarian.

14. Admitted except deny that John L. and George Manta had any interest, direct or indirect, in PSS and Lloyd except through Icarian, up until approximately June 24, 1965.

15. (a) and (b). Admitted

16 (a). ISL can neither admit nor deny this request because the information known or readily obtainable by ISL is insufficient to enable it to do so.

16 (b) and (c). Admitted

17 (a). Denied except admitted that a substantial amount of files were taken to the apartment of Mrs. Pearson or to Nicholas Spanos' sister's house.

17 (b) and (c). Admitted

17 (d). Denied except admitted that some of the files were taken to Kansas City.

17 (e). Admitted as to those files described in the response to 17 (a).

18 (a). Denied except admitted that ISL conducted 17 eastbound sailings and 13 westbound sailings involving three owned vessels and a number of chartered vessels.

18 (b). Denied except admitted that said gross freight receipts were at least in the amount of \$6,200,000.00.

18 (c), (d), (g) and (h). Admitted

18 (e), (f), (i), (j), (k), (l) and (m). Denied

19 (a), (b), (c) and (d). Denied

Dated: June 28 , 1976.
New York, New York

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL

By 

Jonathan W. Lubell, a Partner
Attorneys for Cross-claimant Iranian
Shipping Lines, S.A.
Office and P.O. Address
1370 Avenue of the Americas
New York, New York 10019
(212) 757 4000

RESPONSE TO CROSS CLAIMANT'S SECOND REQUEST TO ADMIT

293a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(pp. 293a-297a)

-----X
IRANIAN SHIPPING LINES, S.A.,
a corporation,

Cross-Claimant,

vs.

PETER MORAITES, et al.,

Impleaded Defendants.
-----X

Docket No. C.A.
72 Civ. 1392 H.F.W.

RESPONSE TO CROSS-
CLAIMANT'S SECOND
REQUEST TO ADMIT

FILED
U.S. DISTRICT COURT
12 PM '76

The Manta defendants respond to Cross-Claimant's Second Request to Admit as follows:

1. Admitted.
2. Admitted.
3. (a) Admitted.

(b) Admitted except denies that the 1969 or other ICC amendments are without effect upon the acts, events, occurrences and omissions referred to.

4. Admitted.
5. (a) Admitted.
- (b) Admitted.
- (c) Admitted.
6. (a) Admitted.

(b) Admitted except deny substantial equivalence with a New York corporation's certificate of incorporation and by-laws combined.

7. (a) Admitted.
- (b) Admitted.
- (c) Denied.
- (d) Admitted.

(e) Denied.

(f) Admitted.

8. (a) Admitted.

(b) Admitted except deny that such transfer was the sole consideration for the issuance of such promissory notes.

(c) Admitted.

9. (a) Admitted.

(b) (Omitted).

(c) Admitted.

(d) Admitted.

(e) Admitted.

10. (a) Denied except admitted that legal rights, duties, powers and liabilities of or relating to an Iranian corporation were, between 1932 and 1969, governed by the "ICC".

(b) Denied except admitted that the ICC was revised effective March 15, 1969.

(c) Admitted.

(d) Admitted.

(e) Admitted.

(f) Admitted.

(g) Admitted.

(h) Admitted.

(i) A. Admitted.

B. Denied.

(j) Denied except admitted that the principles of liability set forth in the paragraphs mentioned constitute some of the principles of liability of directors of an Iranian corporation.

(k) Denied.

(l) Admitted.

(m) Admitted.

(n) Admitted as to paragraphs 38, 39 and 44,

denied as to paragraph 42,

(o) Admitted.

(p) Admitted that John L. Manta was purported to be a director for the period indicated, except denied that he signed ISL's "Statutes"; admitted that Christ Karafotias was purported to be a director for the period indicated; otherwise denied.

(q) Admitted.

11. (a) Admitted for the period 1962 through 1966, otherwise denied.

(b) Admitted.

12. (a) Admitted that defendant Karafotias received a power of attorney from Hask Babayan but denied that such power was not revoked, or attempted to be revoked, until at least June 30, 1966.

(b) Admitted that defendant Steve Manta received a power of attorney from Amir Asian Afshar in his capacity as director; denied that such power of attorney included the status of Chairman of the Board of ISL and that it was not revoked, or attempted to be revoked, until at least June 30, 1966.

13. (a) Denied except admitted that John L. Manta was purported to have become a shareholder of ISL for the period indicated.

(b) Defendants cannot admit or deny the truth of

the matter contained in this portion of the request by reason of conflicting evidence and documents which have come to light during discovery as to whether or not Karafotias ever became a shareholder.

(a) Denied except admitted that Spanos was purported to have become a shareholder and co-managing director of ISL in 1962.

14. Admitted that John L. Manta and George L. Manta were brothers; otherwise denied.

15. Admitted.

16. (a) Admitted.

(b) Denied.

17. Admitted that John and George Manta had interests, direct or indirect, in PSS and Lloyd, but denied that the two corporations, at the time such interests existed, owned said three vessels and transferred title thereto, or caused it to be transferred, to ISL.

18. (a) Defendants cannot admit or deny that Spanos held ISL shares as described in this request because of the conflicting evidence and testimony which discovery has elicited on this point.

(b) Defendants cannot admit or deny the truth of the matter contained in this request because of the conflicting evidence and testimony which has come to light respecting for whom Spanos was acting at any given time.

19. (a) Admitted that defendants Christ Karafotias, Steve Manta and Frank Manta did, at certain times and for certain purposes, act in a representative or agency capacity for John

or George Manta with relation to ISL; otherwise denied.

(b) Denied.

20. (Omitted).

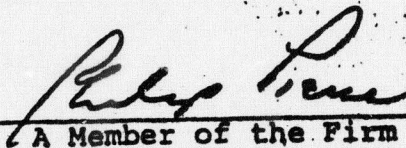
21. Denied except admit to the making of disbursements by the corporations named to or for the account of John or George Manta.

22. Defendants repeat the answer made to request #21.

Dated: New York, New York
July 6, 1976

BOOTH, LIPTON & LIPTON

By



A Member of the Firm
Attorneys for Manta Defendants
405 Park Avenue
New York, New York 10022

TO: COHN, GLICKSTEIN, LURIE,
OSTRIN & LUBELL, ESQS.
Attorneys for Plaintiffs
1370 Avenue of the Americas
New York, N.Y. 10019

RULE 9(g) STATEMENT OF MATERIAL FACTS

298a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRANIAN SHIPPING LINES, S.A.,
a corporation,

Cross-Claimant,

-against-

PETER MORAITES, et al.,

Impleaded Defendants.

: 72 Civ. 1392 (HF 1)

: RULE 9 (g) STATEMENT
OF MATERIAL FACTS

:

:

:

Pursuant to Rule 9 (g) of the General Rules of this
Court, Cross-Claimant Iranian Shipping Lines, S.A. ("ISL")
states:

1. Paragraph No. 6 in the Rule 9 (g) Statement of Arya
Shipping Lines, S.A. ("Arya") is specifically controverted in that
it is not a fact that ISL lacks capacity to maintain this litigation
by reason of its dissolution under Iranian Law.

2. There exists no genuine issue to be tried as to the
following material facts:

A. Upon its dissolution as of April 27, 1973, ISL
was subject to the liquidation proceedings stipulated in the 1932
Commercial Code of Iran.

B. Under the said 1932 Code, ISL has the capacity
to maintain the present litigation.

Dated: New York, New York
July 9, 1976

COHN, GLICKSTEIN, LURIE, OSTRIN &
LUBELL
Attorneys for Cross-Claimant Iranian
Shipping Lines, S.A.
1370 Avenue of the Americas
New York, New York 10019
(212) 757 4000

By:

Jonathan W. Lubell
Jonathan W. Lubell

NOTICE OF MOTION
(pp. 299a-300a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRANIAN SHIPPING LINES, S.A.
a corporation,

Cross-Claimant , 72 Civ. 1392 (HFW)

- against -

NOTICE OF MOTION

PETER MORAITES, et al.,

Impleaded Defendants

S I R S:

PLEASE TAKE NOTICE that on the 26th day of July, 1976, ROBERT R. KREIS and LEVIN, KREIS, RUSKIN & GYORY, defendants herein, upon the papers annexed to the notice of motion of ARYA SHIPPING LINES, S.A., dated June 22, 1976, returnable July 19, 1976, and upon all prior proceedings had and papers filed herein, will move this Court, before the Hon. Henry F. Werker, at the United States Courthouse, Foley Square, New York, New York, at 10:00 o'clock in the forenoon of that day or such other date or time as may be set by the Court, for an Order pursuant to Fed. R. Civ. P. 56 awarding summary judgment in favor of defendants Robert R. Kreis and Levin, Kreis, Ruskin & Gyory, and against the purported cross-

claimant Iranian Shipping Lines, S.A., and dismissing this action, and for such other and further relief as the Court may deem appropriate.

The grounds for this motion are that the purported cross-claimant has been dissolved involuntarily under applicable Iranian law, the law under which cross-claimant was purportedly organized, and, consequently, that it lacks the requisite capacity to maintain this litigation, all as is set forth more fully in the aforesaid Statement of Material Facts, Affidavit and Memorandum.

PLEASE TAKE FURTHER NOTICE that, under rules established by the Hon. Henry F. Werker, answering papers, if any, must be received by movant, filed with the Court and a duplicate brought to chambers at least ten days prior to the return date of this motion.

Dated: New York, New York

July 8, 1976

Yours, etc.,

LEVIN, KREIS, RUSKIN & GYORY

By _____

A Member of the Firm
Attorneys pro se and for Defendant
Robert R. Kreis
529 Fifth Avenue
New York, N.Y. 10017

TO:

All Counsel of Record

NOTICE OF MOTION

301a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(pp. 301a-301a)

-----X

IRANIAN SHIPPING LINES, S.A.,
a corporation,

Cross-Claimant,

72 Civ. 1392 (HFW)

NOTICE OF MOTION

- vs -

PETER MORAITES, et al.,

Impleaded Defendants.

-----X

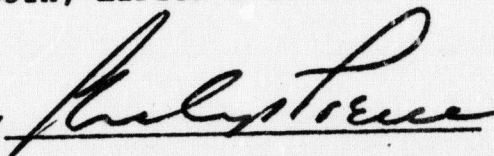
Notice is hereby given that on July 26, 1976, the defendants George L. Manta, Helen Manta, Mark F. Manta (a/k/a Frank Manta), Leo J. Manta and Mark F. Manta as Co-Executors of the Estate of John L. Manta, J. L. Manta, Inc., Manta Vin-Cor Steel Corporation, Manta Investments, Inc., Christ Karafotias, Paul Demos, Seymour F. Simon, Demos, Karafotias & Chrones, a partnership, and Telis Demos d/b/a Demos Travel Bureau (the so-called "Manta" defendants) will move this Court before the Hon. Henry F. Werker, at the United States Courthouse, Foley Square, New York, New York, at 10:00 in the forenoon of that day or such other day or time as may be set by the Court, for its order pursuant to FRCP 56 awarding summary judgment in favor of the said Manta defendants and against the purported cross-claimant, Iranian Shipping Lines, S.A., and dismissing this action, and for such other and further relief as the Court may deem appropriate.

The motion will be made on the grounds set forth in the annexed moving papers statement and memorandum dated June 22, 1976 of the defendant Arya Shipping Lines, S.A.

DATED: New York, New York
July 7, 1976

BOOTH, LIPTON & LIPTON

By



A Member of the Firm
Attorneys for "Manta" Defendants
Office and Post Office Address
405 Park Avenue
New York, New York 10022
[212] 758-1700

TO: Jonathan W. Lubell, Esq.
Cohn, Glickstein, Lurie, Ostrin & Lubell
1370 Avenue of the Americas
New York, New York 10019

And All Counsel of Record

AFFIDAVIT OF JONATHAN W. LUBELL IN OPPOSITION
(pp. 303a-304a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRANIAN SHIPPING LINES, S.A.,
a corporation,

Cross-Claimant,

-against-

PETER MORAITES, et al.,

Impleaded Defendants.

: 72 Civ. 1392 (HFW)

: AFFIDAVIT IN OPPOSITION TO
MOTIONS FOR SUMMARY JUDG-
MENT BY MANTA DEFENDANTS
AND DEFENDANTS ROBERT R.
KREIS and LEVIN, KREIS,
RUSKIN & GYORY

STATE OF NEW YORK)
 : SS.
COUNTY OF NEW YORK)

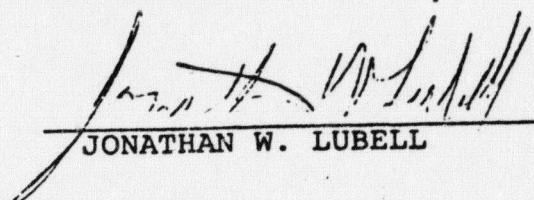
JONATHAN W. LUBELL, being duly sworn, deposes and says:

1. I am a partner in the firm of Cohn, Glickstein, Lurie, Ostrin & Lubell, the attorneys for the Cross-Claimant Iranian Shipping Lines, S.A. ("ISL"). This affidavit is submitted in opposition to the motions of the Manta defendants and defendants Robert R. Kreis and Levin, Kreis, Ruskin & Gyory for summary judgment.

2. The basis of the motions of the said defendants is exclusively the grounds set forth in a prior motion for summary judgment made by the defendant Arya Shipping Lines, S.A. Annexed hereto are ISL's Rule 9 (g) Statement of Material Facts in connection with the Arya motion, and ISL's Memorandum in Opposition to Motion For Summary Judgment made by Arya. We respectfully submit the annexed Statement and Memorandum in opposition to the

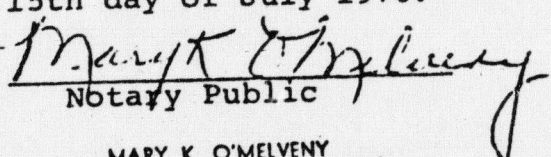
present motions of the Manta defendants and defendants Robert R. Kreis and Levin, Kreis, Ruskin & Gyory.

3. On the grounds set forth in the annexed papers, the present motions for summary judgment should be denied in their entirety because the dissolution of ISL in April of 1973 was specifically subject to the liquidation proceedings of the 1932 Commercial Code of Iran which clearly recognizes the capacity of ISL to maintain the instant litigation.


JONATHAN W. LUBELL

Sworn to before me this

15th day of July 1976.


Notary Public

MARY K. O'MELVENY
Notary Public, State of New York
No. 31-8219570
Qualified in New York County
Commission Expires March 30, 1978

REPLY AFFIDAVIT OF MUSA SABI
(pp. 305a-310a)

305a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- :
IRANIAN SHIPPING LINES, S.A. : Index No.
A CORPORATION, : 72 Civ. 1392 (HFW)
Cross-Claimant :
- against - :
PETER MORAITES, et al., :
Impleaded Defendants :
----- :

CITY OF PARIS
REPUBLIC OF FRANCE : ss
EMBASSY OF THE UNITED STATES OF AMERICA

MUSA SABI, being duly sworn, deposes and says :

1. I make this reply affidavit in support of the motion of defendant Araya Shipping Lines, S.A. ("Araya") for summary judgment upon the ground that Iranian Shipping Lines ("ISL"), the purported cross-claimant, lacks the capacity, under applicable Iranian law, to maintain this litigation.

2. I am informed that ISL claims to have capacity to maintain this litigation even though it was, admittedly, dissolved under Iranian law as of April 27, 1973. This is not correct. As stated in paragraph 12 of my moving

affidavit, sworn to June 12, 1976 ("Sabi Moving Aff."), dissolved joint stock companies such as ISL have absolutely no corporate capacity under Iranian law to prosecute this or any other litigation. Whether or not such dissolution under the law of Iran is the same - the capacity to maintain the litigation, if any, immediately ceased upon the dissolution of ISL as a corporate entity.

Requirements for commencement of
liquidation proceedings with respect to ISL

3. Pursuant to Article 284 of the 1969 amendments, the status of claims, if any, which may have accrued in favor of a dissolved joint stock company, such as ISL, are governed by the liquidation proceedings set forth in the 1932 Code (Sabi Moving Aff. paragraphs 8,11).

4. While ISL is "subject to" liquidation proceedings under the 1932 Code, such liquidation proceedings can be commenced only by strict adherence to all of the procedures and safeguards set forth in the 1932 Code, including appointment of a properly authorized liquidator or liquidators.

5. Liquidation proceedings under the 1932 Code for a joint stock company can be commenced only in one or two ways. The first method for commencement of such liquidation proceedings requires passage of a resolution on proper vote of the shareholders at a meeting called to wind up the company, in conformity with the procedures set forth in Article 74 of the 1932 Code (Exhibit A to the Sabi Moving Aff.) and in ISL's articles of association. The articles of association provide in relevant part :

"31. The scope of powers of the general extra-ordinary meetings is as follows : discussing and deciding on dissolution and alteration of the subjects of the company...."

No other provision of ISL's articles of association except Article 31, authorizes commencement of liquidation proceedings. Annexed hereto as Exhibit A is a copy of ISL's articles of association, as of June 2, 1962, which, I am informed, has been previously produced by ISL and which has been identified during Mr. Spanos' deposition of June 27, 1973 (Transcript pp. 2436-37).

6. Failing the passage of a resolution for the commencement of liquidation proceedings on proper vote by the shareholders at a general extra-ordinary meeting, liquidation proceedings can be commenced only by the second method : by order of the Court of First Instance in Iran upon application of any interested party, such as a Director, Managing Director, shareholder or creditor. This is pursuant to said Court's jurisdiction for summary pleadings in commercial suits under Article 143 (3) of the Civil Procedure Code of Iran. Liquidation proceedings cannot be commenced, under Iranian law, solely upon resolution of the Board of Directors or on the authority of the Managing Directors.

7. Personal examination of the relevant records of the applicable Iranian governmental agencies does not reflect any record of liquidation proceedings having been commenced with respect to ISL, in accordance with Iranian law.

No persons have been empowered
to sue in the name of ISL

8. Only the liquidators of a dissolved stock company have the power to wind up its affairs or bring actions in its name (Sabi Moving Aff., Exhibit A, Articles 207, 209 of the 1932 Code). No liquidators, however, have been empowered to sue in the name of ISL because, as discussed above, liquidation proceedings have not been commenced either by stockholder resolution or by Court proceedings in Iran, as required by Iranian law. Assuming, arguendo, and contrary to fact, that such liquidation proceedings have been commenced, Mr. Spanos can have no authority to prosecute this litigation in the name of ISL because neither he nor anyone else is, or has been, since May 31, 1969, a Director or Managing Director of ISL, and neither Mr. Spanos nor anyone else can have any claim, based upon such expired offices, to the powers of liquidator.

9. Article 46 of the 1932 Code provides that a Director's term of office is "four years at most", and Article 13 of ISL's articles of association likewise provides for a term of four years. Annexed hereto as Exhibit B is a certificate concerning the tenure in office of the Directors and Managing Directors of ISL, issued by the registrar of companies and industrial properties of Tehran, Iran, and my translation thereof which I certify to be complete and accurate ("Certificate"). * The Certificate shows that, with respect to ISL :

* It should be noted, however, that the reference to the date "21.10.1340 (April 10, 1960)" should be, due to typographical errors, "21.1.1340 (April 10, 1961)" and the

" The term of office of the Board of Directors and Managing Directors has expired from May 31, 1969 and hitherto no new Board of Directors has been appointed."

10. Upon expiration of the term of office of a Director or Managing Director, such person lacks any authority or capacity under Iranian law to carry on the corporate functions of the office which has so expired. There is no provision under Iranian law or ISL's articles of association for the "holding over", beyond the term of office, of a Directorship or Managing Directorship or the actual or apparent authority of said offices. To the contrary, as stated above, the term is "four years at most". Accordingly, Mr. Spanos' term of office as a Director or Managing Director of ISL has expired. Therefore, even if liquidation proceedings had been properly commenced, which they have not, Mr. Spanos would lack the authority to prosecute this or any other litigation on behalf of ISL as a Director/Liquidator upon the purported authority of such expired offices.

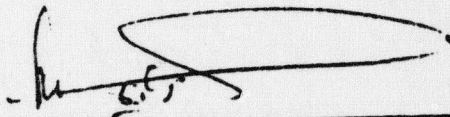
11. Moreover, Spanos' alleged authority, pursuant to a power of attorney allegedly issued as a result of a supposed resolution of the Board of Directors, to institute legal action to collect funds owed to ISL no longer exists, if such authority ever existed. Under Iranian law, the authority, if any, given to Spanos to act as agent for the Board of Directors, was terminated on May 31, 1969 (prior to institution of this action) upon the expiration of the term of office of the Board of Directors, Spanos' principal. If Spanos' supposed authority is viewed as an agency of ISL,

reference in Paragraph 3 to "Article 47 of the act approved1311 (1952)" should be, also due to typographical errors, "Article 46 of the act approved.....1311 (1932)."

the authority was likewise terminated under Iranian law upon the dissolution of ISL on April 27, 1973. It is also clear that the purported resolution, claimed to permit legal action to collect debts, is not by its terms or intent an appointment of Spanos as ISL's liquidator, even if the Board could so appoint him (which, of course, it cannot, see paragraphs 5, 6, supra).

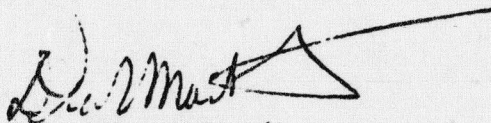
12. Spanos simply has no authority under Iranian law to prosecute this litigation, based upon any theory, arising from the alleged resolution of the Board of Directors, or from his now expired Directorship and Managing Directorship.

REPUBLIC OF FRANCE, CITY OF PARIS
EMBASSY OF THE UNITED STATES OF AMERICA } SS



MUSA SABI

Sworn to before me this
16th day of July, 1976


Dianne E. Markowitz
American Vice Consul

311a

IRANIAN SHIPPING LINES S.A.

.....

81/2/11

تاریخ
۱۳۰۲

: ۱۰۰

نوع - مدت - سرمایه - سهام

شرکت :

تسهامی خطوط کشتی رانی ایران
 بچ شرکت : ایجاد سرویسهای حمل و نقل دریائی
 بنادر ایران و دنیا بمنظور حمل اشخاص و
 - خرید - فروش - معاوضه - اجاره رسمی
 و واگذاری آن کلاه و جزا - تملك - نگهداری
 - گریه - اجاره - رهن - تعمیر - تعویض
 - دایر کردن و فراهم ساختن کشتی از هر
 و هر نوع و انجام و اقدام هر گونه عملیات و
 هر چه در موارد فوق انجام و اقدام در هر
 جهت ضرورت تحصیل منفعت از طریق کشتیرانی
 گردد و قبض و تاسیس نمایندگی از شرکتهای
 ایرانی و ممالك خارجی .

اصلی شرکت - تهران ضیاء بان ایرکیم
۹۲

ت شرکت - نامحدود

[illegible]

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ملکرائی ، بابینہ
ملتن یادو کنڑائی
چندر شاہجور

THE UNIVERSITY OF CHICAGO

5. The Company's capital: Ten Million rials is divided into 200 shares, 195 nominal and five to the bearer, all 200 of which shall have a value of 50,000 Rials each. Each share shall be numbered with numbers from 1 to 200, share bearing No. 1 to 98 inclusive shall hereafter be referred to as A-shares, and shares bearing Nos. 99 to 200 inclusive shall hereafter be referred to as B-shares.*

H. Shakh
Contd....2.

All correspondence to be addressed to head office P. O. Box 1693 Tehran
Telex : Bolegsp. Tm 255

نایه شرکت ده ملیون ریال منقسم به دوپست
پنجاد هزارریالی که ۱۹۵ سهم آن با نام
سهم آن بی نام است . هر سهم دارای شماره
است. بزرگ که شماره های آن از یک شروع و به
خاتمه میپذیرد سهام از شماره یک تا شماره
سهم (الف) و سهام از شماره ۹۹ تا ۲۰۰
ب (ب) نامیده خواهند شد .

REF 118
for identification
5/10, 1970
Jack Finn, Reporter

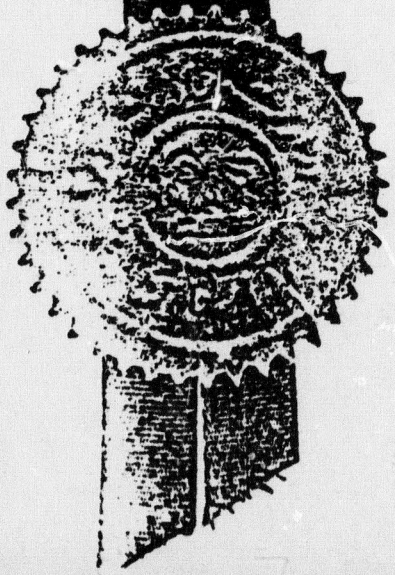
4101

TRANSLATION OF MINISTRY OF JUSTICE - GENERAL REGISTRY OF 313a
LAND AND DEEDS - CERTIFICATE (pp. 313a-315a)
EXHIBIT B

روزنامه رسمی ش ۷۸
۵۲۳۶۲۸۷۳۰۰۰۰



تاریخ ۱۳۰
شماره
پرومیت



Date: 20.7.1974

No. 6/7202

MINISTRY OF JUSTICE
General Registry of Land & Deeds

Certificate

As per the letter No. 357 dated 19.4.1353 (July 10, 1974) of Musa Sabi, Esq., attorney-at-law, concerning the status of Iranian Shipping Company, S.A. (I.S.L.) registered under No. 7761 on 21.10.1340 (April 10, 1960), with reference to the records and contents of the relevant file, it is hereby certified:

- 1- That the number of shares of Mr. Nicolas Spanos, in accordance with the Minutes of the Ordinary General Meetings dated 12.3.1341 and 10.3.1344 (June 2, 1962 and May 31, 1965) is 96 shares.
- 2- That in accordance with the Notice No. 6/13873 dated 16.10.1344 (December 27, 1965), based upon the Minutes of the Extraordinary General Meeting dated 10.3.1344 (May 31, 1965) Messrs. Nicolas Spanos, John L. Manta and Christ Karafotias have been appointed as the Managing Director and the Members of the Board of Directors from A Group respectively, and Messrs. Dr. Amir Aslan Afshar and Hask Babayan as the Chairman of the Board of Directors and the Managing Director from B Group respectively.
- 3- That in accordance with Article 13 of the Articles of Association and Article 47 of the Act approved on 13th Ordibehesht 1311 (1952) the term of office of the Board of Directors is four years; in view of the Notice No. 13873 dated 16.10.1344 (December 27, 1965), based upon the Minutes of the Extraordinary General Meeting dated 10.3.1344 (May 31, 1965) the term of office of the Board of Directors and the Managing Directors has expired from 10.3.1348 (May 31, 1969) and hitherto no new Board of Directors has been appointed.
- 4- That in accordance with Article 18 of the Articles of Association all the documents, letters, checks and valuable documents of the Company must be signed collectively by the Managing Directors and stamped with the seal of the Company. _____

بقره درجہ ۲

/...

5- That in accordance with Article 19 of the Articles of Association of the said Company none of the Members of the Board of Directors is authorized individually to do any act in the name of the Company unless prior permission has been obtained from the Board of Directors in this connection.

This Certificate has been issued for presentation to the courts of law of the United States and shall be valid after payment of the legal charges.

Registrar of Companies and Industrial
Properties

(Signed and sealed)

(Legal fees are paid and revenue
stamp affixed and cancelled)

Seen for authentication of the signature of Mr. Mir Abdolbaghi the administrative assistant of this office. Registrar of Companies and Industrial Property - Hamid Jamshidi (Sgd. & Sealed)

Reverse

No. 6040 dated 8.5.1353 (30.7.1974) seen for authentication of the signature of Mr. Jamshidi and the seal of the office of the Registrar of Companies, marked (X) regardless of the contents herein. For, Chief, authentication and Personal Status Bureau.

Stamp 50.-Rls., seal of the Ministry of Foreign Affairs (Sgd.)
(Two Revenue stamps affixed and cancelled.)

Certified to be a true translation - Official translator to the
Ministry of Justice - Musa Sabi.

ترجمه برابر اصل است - مترجم رسمی وزارت دادگستری - موسی صبی



AMENDMENT TO REPLY AFFIDAVIT OF MUSA SABI
(pp. 316a-317a)

316a

Great Britain and Northern Ireland)
London, England) ss:
Embassy of the United States of America)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
IRANIAN SHIPPING LINES, S.A., :
a Corporation, :
Cross-Claimant, : 72 Civ. 1392 (HFW)
-against- : AMENDMENT TO REPLY
: AFFIDAVIT
PETER MORAITES, et al., :
Impleaded Defendants. :
----- x

MUSA SABI, being duly sworn, deposes and says:

1. This affidavit corrects a stenographic omission which appears in the last sentence of paragraph 2 of my Reply Affidavit, sworn to July 16, 1976 ("Reply Affidavit").

2. The last sentence of paragraph 2 of the Reply Affidavit now states:

"Whether or not such dissolution under the law of Iran is the same - the capacity to maintain the litigation, if any, immediately ceased upon the dissolution of ISL as a corporate entity."

3. The last sentence of paragraph 2 should have stated, and by this affidavit I hereby amend same to state:

"Whether or not such dissolution occurred prior to or subsequent to commencement of the litigation, the operative effect of ISL's dissolution under the law of Iran is the same - the capacity to maintain the litigation, if any, immediately ceased upon the dissolution of ISL as a corporate entity."

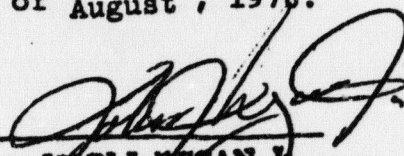


MUSA SABI

Sworn to before me this
second day of August, 1976.

MUSA SABI

Musa SABI

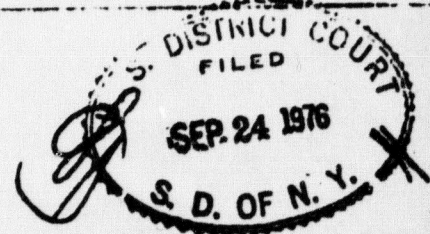


JOHN J. DEGAN, JR.
Consul of the United States
of America at London, England

ORDER OF SEPTEMBER 16, 1976 BY WERKER, J.

318a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
RUDOLPH V. ALOSIO, :

Plaintiff, :

- against - :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :
-----x

ORDER

67 Civ. 9 (HFW)

HENRY F. WERKER, D. J.

It is hereby ORDERED that docket No. 67 Civ. 9 be reopened and
carried as a consolidated action under docket number 72 Civ. 1392.

SO ORDERED.

DATED: New York, New York

September 16, 1976

U. S. D. J.

RECEIVED
SEP 24 1976

MEMORANDUM DECISION DATED OCTOBER 19, 1976

319a

(pp. 319a-325a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUDOLPH V. ALOSIO,

Plaintiff,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Defendants.

ATLANTIC STEAMERS SUPPLY CO.,
INC. OF PENNSYLVANIA, et al.,

First Intervening Plaintiffs,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants.

IRANIAN SHIPPING LINES, S.A., a
corporation,

Cross-Claimant,

- against -

PETER MORAITES, et al.,

Impleaded Defendants.

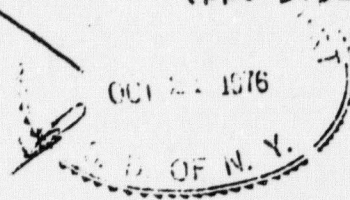
APPEARANCES: (See last page)

HENRY F. WERKER, D. J.

This is a motion by defendant Arya Shipping Lines, S.A. pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment on the

MICROFILM

OCT 21 1976



MEMORANDUM DECISION

72 Civ. 1392 (HFW)

amended cross-claim brought against it by Iranian Shipping Lines, S.A. (hereinafter "ISL"). The Manta defendants,¹ Robert R. Kreis and the firm of Levin, Kreis, Ruskin & Gyory have also moved for summary judgment on that cross-claim upon the papers submitted by Arya. Movants contend that ISL lacks the capacity to prosecute this suit.

The facts surrounding this motion are not complicated. On March 1, 1972, ISL filed a cross-claim against Arya and twenty-two other defendants. The cross-claim was brought by Nick C., Spanos who had been appointed as a Managing Director of ISL on May 31, 1965. ISL itself was incorporated on April 10, 1961 as a "joint stock company" under the Commercial Code of Iran of 1932 (hereinafter "1932 Code").

Amendments to the 1932 Code effective in 1969 provided that joint stock companies had to reorganize, either as "public" or "private" joint stock companies or as non-joint stock companies. Pursuant to a subsequent amendment, joint stock companies organized under the 1932 Code, such as ISL, were given until April 27, 1973 to convert to an approved form of organization. Those that did not were to be dissolved as of that date by operation of law. A certificate issued by the Registrar of Companies and Industrial Properties of the Iranian Ministry of Justice² states that ISL failed to make the required change in its corporate structure and that it "is considered as having been dissolved... subject to the liquidation proceedings stipulated in the [1932 Code]." The foregoing facts are not disputed.

Arya and the other movants contend that ISL lacks the capacity to continue prosecution of this suit because of the involuntary dissolution. They note that:

"Iranian law contains no savings statute whereby the

automatic incidents of corporate death are suspended for a specified period of time." Arya Memorandum at 6.

ISL maintains, however, that Spanos was authorized by an ISL Board of Directors resolution dated March 28, 1964 to "institute legal action against any person and/or party for the collection of all funds due and owed to the company." ISL urges that this resolution and the 1932 Code empower Spanos to proceed with this suit as a corporate liquidator.

DISCUSSION

Under Rule 17(b), Fed. R. Civ. P., the capacity of a corporation to sue is determined by the law under which it was organized. In deciding questions of foreign law, the court may look to the testimony of expert witnesses as well as the underlying statutes. 9 Wright & Miller, Federal Practice and Procedure § 2444 (1971). Moreover, disagreements over the meaning of a foreign statute raise questions of law, not fact, and they do not preclude the granting of a motion for summary judgment. Bassis v. Universal Line, S.A., 436 F.2d 64, 68 (2d Cir. 1970); Fleischmann Distilling Corp. v. Distillers Co., Ltd. 395 F. Supp. 221 (S.D.N.Y. 1975).

Article 284 of the 1969 amendments to the 1932 Code provides that the dissolution of a joint stock company which has not been transformed into an approved type of organization by the deadline date "shall be subject to the dissolution proceedings laid down in the [1932 Code]." Article 203 of the 1932 Code in turn, provides that:

"In [the] case of . . . joint stock companies, the director or directors shall carry out the liquidation proceedings. . ."

Finally, article 209 of the 1932 Code declares that:

"Liquidators have the right to bring or defend actions in the company's name, either in person or by attorney."

The 1932 Code fails to state, however, whether the authority of directors to carry out liquidation proceedings under article 203 makes them liquidators within the meaning of article 209.

In support of the motion for summary judgment, Arya has submitted two sworn affidavits by Musa Sabi, an accomplished Iranian attorney who has translated eight volumes of Iranian law into English. He has served for more than twenty years as an Iranian legal counsel to the United States Embassy in Tehran and is a recognized authority on the law of Iran. ISL has not questioned his credentials.

Musa Sabi states that liquidation proceedings cannot be commenced by the Board of Directors or Managing Directors acting alone. He goes on to explain that there are only two ways to commence liquidation proceedings under the 1932 Code and the ISL Articles of Association: (1) by shareholder vote at a meeting called to wind up the company in accordance with article 74 of the 1932 Code or (2) by an order of the Iranian Court of First Instance issued upon the application of an interested party under article 143(3) of the Iranian Civil Procedure Code. Neither alternative was pursued here. Indeed, the amended ISL cross-claim notes that:

"... Forty-eight percent of the shares of ISL are opposed to any dissolution or end of its corporate existence.... Under ISL's Articles of Association, a resolution to dissolve or liquidate ISL cannot legitimately be carried if it is opposed by as many as forty-eight percent of the shares issued and outstanding."

In light of the affidavits of Musa Sabi, I am unwilling to conclude, as I otherwise might from the statute alone, that the express power of directors to "carry out" liquidation proceedings under Article 203 also authorizes them to bring actions in the company's name.

Moreover, it is difficult to believe, as ISL contends, that the 1964 board resolution was intended to authorize Spanos to act as a liquidator. It was passed almost four years before the need to reorganize ISL arose and almost eight years before the dissolution took effect.

Even if I were to assume arguendo that Spanos was properly authorized in 1964 to bring suit as a director, the authorization would have expired long before the cross-claim was filed. Article 46 of the 1932 Code sets the term of office of a director at "four years at most," although a company's Articles of Association may permit the reelection of directors. Article 13 of the ISL Articles states that board members shall serve for a period of four years and that they may be reelected. Neither the 1932 Code nor the ISL Articles provides for directors to remain in office in the event that replacement directors are not elected for some reason. This differs of course from the usual practice in the United States. e.g. New York Business Corporation Law § 703(b) (McKinney 1963). Since Spanos and his co-directors were last elected to their positions at an "Extraordinary Meeting" of ISL shareholders held on May 31, 1965, their terms of office expired on May 31, 1969, and Spanos was not a corporate director at the time he brought the cross-claim against Arya and others.³ Thus, he could not possibly have brought the cross-claim as part of his duty to carry out liquidation proceedings under article 203.

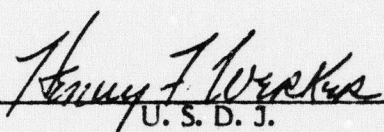
The court concludes that ISL has been dissolved under Iranian law and that Spanos cannot continue its cross-claim against Arya and the other defendants.

Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Bldg. Corp., 302 U.S. 120, 124-25 (1937); Oklahoma Natural Gas Co. v. Oklahoma, 273 U.S. 257-259-60. The cross-claim is therefore dismissed.

SO ORDERED.

DATED: New York, New York

October 19, 1976



U. S. D. J.

ALOSIO v. IRANIAN SHIPPING LINES, S.A., 67 Civ. 9 (HFW)

NOTES

1. The Manta defendants are: George L. Manta, Helen Manta, Mark F. Manta (a/k/a Frank Manta), Leo J. Manta and Mark F. Manta as Co-Executors of the Estate of John L. Manta, J.L. Manta, Inc., Manta Vin-Cor Steel Corporation, Manta Investments, Inc., Christ Karafotias, Paul Demos, Seymour F. Simon, Demos, Karafotias & Chrones, a partnership, and Telis Demos d/b/a Demos Travel Bureau.
2. The Registrar is required to maintain all records which must be filed under the 1932 Code and the 1969 Amendments.
3. At an earlier stage of this action, the Midland Bank and Trust Company moved to dismiss an ISL cross-claim against it. The bank contended that Spanos alone could not sign a stipulation of substitution of counsel because the ISL Articles of Association required documents to be signed jointly by the two Managing Directors of the company. ISL contends that in deciding that motion Judge Brieant held that "Spanos had the authority to bring the cross claim in the name and on behalf of ISL." ISL Memorandum at 3. However, that motion was addressed to a different question of law and Judge Brieant denied it "without prejudice to renew on a showing of facts indicating absence of actual authority." With respect to the board resolution upon which ISL seeks to rely, Judge Brieant observed that it was in force "so far as any factual evidence proffered on this motion is concerned." Because Arya has adduced further facts for the court's consideration at this time, I have reached a conclusion which differs from that of Judge Brieant.

JUDGMENT DATED NOVEMBER 15, 1976

326a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(pp. 326a-329a)

RUDOLPH V. ALOSIO,

Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A.; HASK BABAYAN;
CARGO AND SHIPPING, S.A.; THE MIDLAND BANK
& TRUST COMPANY, PARAMUS, NEW JERSEY;
GUARANTY BANK & TRUST COMPANY, CHICAGO,
ILLINOIS; YVONNE AFSHAR; NASSER AFSHAR;
DENNIS AFSHAR; MASSOUME KNALADJ AFSHAR;
MANSUR AFSHAR; MANOCHIK AFSHAR; FRANK J.
MANTA and LEO J. MANTA, as Executors u/w of
John L. Manta, GEORGE L. MANTA; CHRIST
KARAFOTIAS; FRANK J. MANTA (a/k/a MARK
FRANK MANTA); LEO J. MANTA; STEPHEN J.
MANTA; J. L. MANTA, INC., an Illinois
corporation; and MANTA-VIN COR CORPORA-
TION, an Illinois corporation,

Defendants.

RECEIVED IN CHAMBERS
OF JUDGE HENRY F. WENGER
NOV 15 1976

72 CIV.1392 (HFW)

JUDGMENT

ATLANTIC STEAMERS SUPPLY CO., INC. OF
PENNSYLVANIA; ATLANTIC STEAMERS SUPPLY CO.,
INC.; MARITIME FOOD CORPORATION; LEE &
PALMER, INC.; and MARINE MAINTENANCE COMPANY,

Intervening Plaintiffs,

-against-

IRANIAN SHIPPING LINES, S.A.; HASK BABAYAN;
LILIAN BABAYAN; CARGO AND SHIPPING, S.A.;
MAHMOUD NAZEMI; MIDLAND BANK & TRUST COMPANY;
GUARANTY BANK & TRUST COMPANY; BANK MARKEZI
IRAN; NASSER AFSHAR; FRANK J. MANTA and
LEO J. MANTA, as Executors u/w of John L.
Manta; GEORGE L. MANTA; CHRIST KARAFOTIAS;
FRANK J. MANTA (a/k/a MARK FRANK MANTA);
STEPHEN A. MANTA; J. L. MANTA, INC.; MANTA
VIN-COR CORPORATION; PAUL J. FRANGOULIS;
ELIAS FRANGOULIS; JOHN KLIASFAS; ACHILLES
KLIASFAS; DEMETRIOS G. GOUZOULIS; and
MARITIME AND MERCANTILE AGENCIES, LTD.,

Second Defendants.

MICROFILM

NOV 17 1976

----- x
BAY RIDGE OPERATING CO., INC., :

Second Intervening Plaintiff, :

-against- :

IRANIAN SHIPPING LINES, S.A.; HASK BABAYAN; :
LILIAN BABAYAN; CARGO AND SHIPPING, S.A.; :
MAHMOUD NAZEMI; MIDLAND BANK & TRUST COM- :
PANY; GUARANTY BANK & TRUST COMPANY; BANK :
MARKEZI, IRAN; NASSER AFSHAR; FRANK J. :
MANTA and LEO J. MANTA, as Executors u/w :
of John L. Manta; GEORGE L. MANTA; CHRIST :
KARAFOTIAS; FRANK J. MANTA (a/k/a MARK :
FRANK MANTA); STEPHEN A. MANTA; J. L. :
MANTA, INC.; MANTA VIN-COR CORPORATION; :
PAUL J. FRANGOULIS; ELIAS FRANGOULIS; :
JOHN KLIAFAS; ACHILLES KLIAFAS; :
DEMETRIOS G. GOUZOULIS; and MARITIME AND :
MERCANTILE AGENCIES, LTD., :

Second Defendants. :

----- x
GULF OIL TRADING COMPANY, :

Third Intervening Plaintiff, :

-against- :

IRANIAN SHIPPING LINES, S.A.; HASK BABAYAN; :
LILIAN BABAYAN; CARGO AND SHIPPING, S.A.; :
MAHMOUD NAZEMI; BANK MARKEZI IRAN; PAUL J. :
FRANGOULIS; ELIAS FRANGOULIS; JOHN :
KLIAFAS; ACHILLES KLIAFAS; DEMETRIOS G. :
GOUZOULIS; and MARITIME AND MERCANTILE :
AGENCIES, LTD., :

Third Defendants. :

----- x
 IRANIAN SHIPPING LINES, S.A.,
 a corporation,

Cross-Claimant,

-against-

PETER MORAITES; WALTER N. JONES;
 JOHN PENSEC; MIDLAND BANK & TRUST
 COMPANY; GUARANTY BANK & TRUST COMPANY;
 ROBERT DE COTIIS; NASSER AFSHAR;
 YVONNE AFSHAR; EDWARD SWINBURNE;
 MILTON PILALAS; JAMES KATSOURIS;
 GEORGE L. MANTA; HELEN MANTA; MARK F.
 MANTA (a/k/a FRANK MANTA); STEPHEN A.
 MANTA (a/k/a STEVE MANTA); LEO J. MANTA
 and MARK F. MANTA as CO-EXECUTORS of
 the ESTATE OF JOHN L. MANTA; J.L.
 MANTA, INC.; MANTA VIN-COR STEEL
 CORPORATION; MANTA INVESTMENTS, INC.;
 CHRIST KARAFOTIAS; PAUL DEMOS;
 SEYMOUR F. SIMON; CHRIST AVALIOTIS;
 BASIL VLAVIANOS; ROBERT KREIS; LEVIN,
 KREIS, RUSKIN & GYORY, a partnership;
 SOUTH SHIPPING COMPANY, S.A.; IRAN
 LINE, S.A.; JAN C. UITERWYK; JAN C.
 UITERWYK CO., INC.; ARYA SHIPPING
 LINES, S.A.; AMBER MARITIME CORPORA-
 TION; AHMET CHAFIK; HASK BABAYAN;
 NORTON LILLY & COMPANY, INC.;
 DEMOS, KARAFOTIAS & CHRONES, a partner-
 ship; and TELIS DEMOS d/b/a DEMOS
 TRAVEL BUREAU,

Impleaded Defendants.

----- x

The Honorable Henry F. Werker, United States District
 Judge, upon motion of the impleaded defendant Arya Shipping
 Lines, S.A. and of certain other impleaded defendants, having
 determined by decision and order dated October 19, 19'6 that
 cross-claimant Iranian Shipping Lines, S.A. has been dissolved
 under Iranian law and that neither it nor Nicholas Spanos can

continue its cross-claim against Arya Shipping Lines, S.A. or the other impleaded defendants, and upon the express determination by said Court that there is no just reason for delay of entry of this judgment, and upon the express direction thereof for the entry of this judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, it is

ORDERED, ADJUDGED AND DECREED: that impleaded defendants Peter Moraites; Walter N. Jones; John Pensec; Midland Bank & Trust Company; Guaranty Bank & Trust Company; Robert De Cotiis; Nasser Afshar; Yvonne Afshar; Edward Swinburne; Milton Pilalas; James Katsouris; George L. Manta; Helen Manta; Mark F. Manta (a/k/a Frank Manta); Stephen A. Manta (a/k/a Steve Manta); Leo J. Manta and Mark F. Manta as Co-Executors of the Estate of John L. Manta; J. L. Manta, Inc.; Manta Vin-Cor Steel Corporation; Manta Investments, Inc.; Chris Karafotias; Paul Demos; Seymour F. Simon; Christ Avaliotis; Basil Vlavianos; Robert Kreis; Levin, Kreis, Ruskin & Gyory, a partnership; South Shipping Company, S.A.; Iran Line, S.A.; Jan C. Uiterwyk; Jan C. Uiterwyk Co., Inc.; Arya Shipping Lines, S.A.; Amber Maritime Corporation; Ahmet Chafik; Hask Babayan; Norton Lilly & Company, Inc.; Demos, Karafotias & Chrones, a partnership; and Telis Demos d/b/a Demos Travel Bureau, have judgment against cross-claimant IRANIAN SHIPPING LINES, S.A. dismissing all cross-claims as to all of said impleaded defendants.

Dated: New York, New York
November 15, 1976

Supervised J. B. Bong...
Clerk 11/17/76

A P P R O V E D :

Henry F. Greiner
U. S. D. J.
November 16, 1976

NOTICE OF MOTION FOR ALLOWANCE

(pp. 330a-331a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

IRANIAN SHIPPING LINES, S.A., :

Plaintiff, :

72 Civ. 1392

-against- :

PETER MORAITES, et al., :

Defendants. :

NOTICE OF MOTIONFOR ALLOWANCE

----- X

RUDOLPH V. ALOSSIO, :

Plaintiff, :

67 Civ. 9

-against- :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :

----- X

S I R S :

PLEASE TAKE NOTICE that upon the annexed affirmation of SAMUEL C. COLEMAN, dated November 30, 1976, an application for allowances as described therein will be brought on for hearing before Honorable Henry F. Werker, a judge of the U. S. District Court for the Southern District of New York on December 13, 1976, at 4:30 P.M. in Room 312 of the U. S. Court House, Foley Square, New York, N. Y.

Dated: November 30, 1976

YOURS, etc.

Samuel C. Coleman

SAMUEL C. COLEMAN, pro se
Two West 89th Street
New York, N. Y. 10024
Tel. EN 2-4010

TO:

Clerk, U. S. District Court
Southern District of New York
U. S. Court House
Foley Square, New York, N.Y. 10007

AFFIDAVIT OF NICK C. SPANOS IN OPPOSITION TO MOTION
FOR ALLOWANCE (pp. 332a-333a)

332a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IRANIAN SHIPPING LINES, S.A., :

Plaintiff, :

- against - :

PETER MORAITES, et al., :

Defendants. :

72 Civ. 1392

AFFIDAVIT IN
OPPOSITION TO
MOTION FOR ALLOWANCE
OF COMPENSATION
-----x

RUDOLPH V. ALOSIO, :

Plaintiff, :

- against - :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :
-----x

STATE OF NEW YORK)

) ss.:

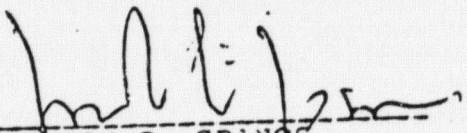
COUNTY OF NEW YORK)

NICK C. SPANOS, being duly sworn, upon his oath deposes and states as follows:

1. I am and since 1949 have been a member of the bar of the State of California; I am one of the co-managing directors of IRANIAN SHIPPING LINES, S.A. ("ISL"), and a member of its board of directors; pursuant to special authority vested in me by ISL's board of directors, have acted for ISL in the above-captioned

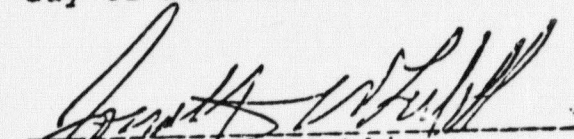
matter since this litigation was commenced in January 1967. I 333a
make this affidavit in opposition to the motion of Samuel C.
Coleman ("Mr. Coleman") for an allowance of fees for services he
claims to have rendered pursuant to orders of this Court.

2. Unless otherwise indicated, all statements made herein
are based on personal knowledge; the transcript of certain
hearings scheduled and presided over by Mr. Coleman as Special
Master; certain documents marked and identified as exhibits in
varanty, the Manta Group, Arya and other defendants. Mr. Cole-
man's improper and falsified Report should not be rewarded.
His motion for compensation should in all respects be denied.



NICK C. SPANOS

Sworn to before me this 10th
day of December 1976.



Notary Public

MEMORANDUM OF NICK C. SPANOS IN OPPOSITION TO MOTION
FOR ALLOWANCE (pp. 334a-337a)

334a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IRANIAN SHIPPING LINES, S.A., :

Plaintiff, :

- against - :

72 Civ. 1392

PETER MORAITES, et al., :

Defendants. :

MEMORANDUM IN
OPPOSITION TO
MOTION FOR ALLOWANCE
OF COMPENSATION
-----x

RUDDOLPH V. ALOSIO, :

Plaintiff, :

- against - :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :
-----x

As appears from the affidavit of Nick C. Spanos being filed herewith, IRANIAN SHIPPING LINES, S.A. ("ISL") never consented to either order of reference and never consented or agreed to pay any fees to Mr. Coleman.

We do not see in that setting how any fees can be awarded as to either order, because we know of no authority (and Mr. Coleman cites none) which authorizes the imposition of fees to pay a Special Master where the parties do not consent or agree to pay his fee.

On its face his application as to the "20 hours" claimed as time spent "in the first motion" shows (a) that

the order of reference has not been complied with in that those seeking discovery (the Nanta Group) are not stated as having paid him anything, and (b) that the application at this time is premature because we have not yet reached the conclusion(s) of the litigation.

As to the second motion, Mr. Coleman should not be awarded any compensation on these additional grounds. First of all, he admits that almost everything he did or claims he did was unnecessary to the result on the venue motion. A Special Master should not be able to bootstrap himself into a substantial income by creating irrelevant issues, holding unnecessary hearings on those issues, and then seeking to be paid for conducting the hearings. He should not be paid for writing a 28-page Report when obviously one page or half a page would have been sufficient. He should not be paid for writing a Supplemental Report which was made necessary only because of misstatements in the unnecessary 28 pages of his original Report. Having already put the parties to so much needless effort and expense (5 unnecessary hearings), he should not be allowed to add to that expense, even by the negligible amount for the work he can show was necessary.

Even if there were some necessity or justification for the services Mr. Coleman claims to have rendered, it is respectfully submitted he should still be awarded no compen-

sation as to either reference because it is clear from the 336a
Spanos affidavit that ISL is entitled to a hearing on whether
Mr. Coleman has been guilty of serious misconduct and misbehavior
and that the Report and Supplemental Report which he filed herein
are deficient in serious and important respects.

It would be demeaning and inappropriate for the Court
to award a fee of any kind to a judicial officer who has done
what the Spanos affidavit states Mr. Coleman has done. Under
the law this Court has a duty and responsibility to strictly
supervise Mr. Coleman and hold him strictly accountable for
his actions. Thus, it was long ago held, in Universal Oil
Products Co. v. Hall, 76 F.2d 258 (8th Cir., 1935), that where
a Special Master was guilty of misconduct,

"it was the duty of the Court to make stern and
searching inquiry into the facts and to inform
itself fully what the conduct of its officer had
been, and, where satisfied of the guilt of its
officer, no halfway measures should be considered,
but the court officer must be held to strict ac-
countability. Newton v. Consolidated Gas Co.,
259 U.S. 101, 42 S.Ct. 438, 66 L.Ed. 844; Business
Men's Asur. Co. v. Campbell (C.C.A. 8) 18 F. (2d)
223, 225; In re Gilbert, 276 U.S. 6, 48 S.Ct. 210,
72 L.Ed. 441; Kellner v. Schmidt, 237 Ill. App.
428, 435; Pleasants v. Southern Ry. Co. (C.C.A. 4)
93 F. 93." (76 F.2d 258)

It is respectfully submitted that in the circumstances
described by the Spanos affidavit, this Court should follow

the guidelines laid down by the Eighth Circuit in Universal 337a
Oil Products Co.

Dated: New York, New York
December 10, 1976

Respectfully submitted,

COHN, GLICKSTEIN, LURIE
OSTRIN & LUBELL

Attorneys for Plaintiff
and Cross-Claimant IRANIAN
SHIPPING LINES, S.A.
1370 Avenue of the Americas
New York, New York 10019

OF COUNSEL:

Howard F. Cerny

AFFIDAVIT OF PHILIP PIERCE

338a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(pp. 338a-339a)

-----X
IRANIAN SHIPPING LINES, S. A.,

Plaintiff,

72 Civ. 1392

- against -

PETER MORAITES, et al.,

Defendants.

-----X

AFFIDAVIT

RUDOLPH V. ALOSIO,

Plaintiff,

69 Civ. 9

- against -

IRANIAN SHIPPING LINES, S. A., et al.,

Defendants.

-----X

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK.)

PHILIP PIERCE being duly sworn, deposes and says:

1. That he is a member of the firm of Booth, Lipton & Lipton, attorneys for the so-called Manta defendants and makes this affidavit with respect to the application of Hon. Samuel C. Coleman for allowances, for services previously rendered by him as Special Master.

2. The Manta defendants do not oppose the granting

to Justice Coleman of a reasonable allowance for his said services, but request that any such award be duly apportioned in the first instance among the parties in interest and made subject to the provisions of Rule 54(d) of the Federal Rules of Civil Procedure.

Philip Pierce

Sworn to before me on
December 13, 1976.

LETTER OF LUBELL DATED DECEMBER 15, 1976

340a

LAW OFFICES

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL

1370 AVENUE OF THE AMERICAS

NEW YORK, N. Y. 10019

LOUIS B. BORDIN (1898-1952)
SIDNEY ELLIOTT COHN
STEPHEN J. LINE
NEAL J. GANTICHER
LAURENCE R. KRUTICK
DAVID G. LUBELL
JONATHAN W. LUBELL
JEROME H. LURIE
MARY R. O'MELVENY
H. HOWARD OSTRIN
PHILIP D. TOBIN

ANTHONY J. DISTINTI, JR.
AUDREY J. ISAACS
NEIL D. LIPTON
BARBARA S. MEHLISACK
ROBERT W. PARTNOY
ELLIOTT D. SHRIFFMAN
JEAN TAYLOR

*NEW JERSEY BAR ONLY

AREA CODE 212
757-4000
CABLE ADDRESS
"COHOLICK"

IRVING MOROSOFF
OF COUNSEL

December 15, 1976

Re: Iranian Shipping Lines
72 Civ. 1392

Dear Sirs:

I enclose a self-explanatory letter from Mr. Spanos regarding certain typographical errors in his affidavit.

Very truly yours,

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL

Jonathan W. Lubell
Jonathan W. Lubell

JWL:mf
Enc.

TO: Clerk, U.S. District Court
Southern District of New York
U.S. Court House
Foley Square, New York 10007

Hon. Samuel C. Coleman
Two West 89th Street
New York, N.Y. 10024

Blinder, Steinhaus & Hochhauser, Esqs.
Attorneys for John Pensec
655 Madison Avenue
New York, New York 10021

Booth Lipton & Lipton, Esqs.
Attorneys for Manta defendants
405 Park Avenue
New York, N.Y. 10022

Nick C. Spanos, c/o

LETTER OF SPANOS DATED DECEMBER 11, 1976

341a

HOWARD FRANKLIN CERNY
345 PARK AVENUE, NEW YORK, N.Y. 10022

(212) 688 0700 - CABLE INTERFID

TELEX 86486

905 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 347-9000

December 11, 1976

NEW ADDRESS:
200 Park Avenue, 50th Floor
New York, NY 10017

Jonathan Lubell, Esq.
Cohn, Glickstein, Lurie,
Ostrin & Lubell
1370 Avenue of the Americas
New York, New York 10019

Re: Iranian Shipping Lines

Dear Jonathan:

Certain typographical errors in my affidavit require correction. The transcript citation at the end of paragraph 46 (which ends on page 23 of the affidavit) should be the same as the citation at the end of the fifth line on page 17 of the affidavit, namely Tr. 1361:13-20.

The second sentence of paragraph 36C, which is the third paragraph on page 16, should read "Guaranty Exhibit G (a copy purportedly of a corporate resolution as to what checks Guaranty was authorized to honor) required that all checks carry two signatures; see also paragraph 1 of Schedule 1 as to GB Exhibit F and paragraph 2 of Schedule 1 as to GB Exhibit G."

I hope you will immediately transmit copies of this letter to the Court, to Mr. Coleman, and to all counsel who received copies of my affidavit, and I would appreciate your sending a copy of your covering letter to me at 6714 Ridge Boulevard, Brooklyn, NY 11220.

Yours truly,

Nick C. Spanos

NCS:LCS

cc: Howard F. Cerny, Esq.
Nicholas J. P. Tryforos, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IRANIAN SHIPPING LINES, S. A., :

Plaintiff, :

-against-

PETER MORAITES, et al., :

Defendants. :

67 Civ. 9

&

72 Civ. 1392 (HFW)

AFFIDAVIT SUBMITTED
BY INTERVENING PLAINTIFFS
IN RESPECT OF MOTION OF
HON. SAMUEL C. COLEMAN
FOR AN ALLOWANCE OF FEES

-----X

RUDOLPH V. ALOSIO, :

Plaintiff, :

-against-

IRANIAN SHIPPING LINES, S. A., :
et al., :

Defendants. :

-----X
STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

SIRIUS C. COOK, being duly sworn, says:

1. I am a member of the firm of Healy & Baillie, attorneys for the Intervening Plaintiffs in these actions. I am personally familiar with all proceedings hereinafter referred to.

2. This affidavit is submitted on behalf of the Intervening Plaintiffs in this action, Atlantic Steamers Supply Co., Inc. of Pennsylvania, and others, in opposition to any allowance to the Hon. Samuel C. Coleman in connection with his services as Special Master, or in any other capacity herein, to the extent, if any, that it may be claimed the Intervening Claimants are liable for any part of any such allowance.

AFFIDAVIT OF HOWARD L. JACOBS

343a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRANIAN SHIPPING LINES, S.A.,

Plaintiff,

-against-

PETER MORAITES, et al.,

Defendants.

X

:

:

:

:

:

72 Civ. 1392

A F F I D A V I T

X

RUDOLPH V. ALOSSIO,

Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Defendants.

:

:

:

:

:

67 Civ. 9 (HTW)

RECEIVED

DATE

1/12/77

TIME

08 45

BY

N.J.P.T.

X

STATE OF NEW YORK)

) SS.:

COUNTY OF NEW YORK)

HOWARD L. JACOBS, being duly sworn, deposes and says:

1. Your deponent is the attorney for the Guaranty Bank & Trust Company ("Guaranty"), one of the defendants in this case, and makes this affidavit with respect to the application of the Honorable Samuel C. Coleman for allowances for services previously rendered by him as Special Master with regard to Guaranty's motion to dismiss. Guaranty was not a party to the depositions and has nothing to say as to that application.

NOTICE OF APPEAL DA ED JANUARY 14, 1977

344a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(pp. 344a-345a)

-----X
RUDOLPH V. ALOSIO,

Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Defendants.
-----X

ATLANTIC STEAMERS SUPPLY CO., INC. OF
PENNSYLVANIA, et al.,

Intervening Plaintiffs,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants.
-----X

BAY RIDGE OPERATING CO., INC.,

Second Intervening Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants.
-----X

GULF OIL TRADING COMPANY,

Third Intervening Plaintiff,

-against-

IRANIAN SHIPPING LINES, S.A., et al.,

Third Defendants.

72 CIV. 1392 (HFW)

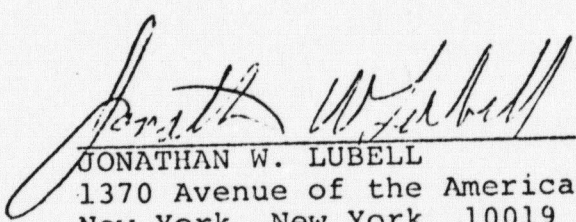
NOTICE OF APPEAL

-----X
IRANIAN SHIPPING LINES, S.A.,
a corporation, Cross-Claimant,

-against-

PETER MORAITES, et al.,
Impleaded Defendants.
-----X

Notice is hereby given that IRANIAN SHIPPING LINES, S.A., cross-claimant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment dismissing its cross-claims as to all defendants listed in said judgment, which judgment was entered in this action on November 17, 1976, and from each and every part thereof.
January 14, 1977.


JONATHAN W. LUBELL
1370 Avenue of the Americas
New York, New York 10019
(212) 757-4000
Attorney for IRANIAN SHIPPING
LINES, S.A.

AFFIDAVIT OF JONATHAN W. LUBELL

346a

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

(pp. 346a-348a)

JONATHAN W. LUBELL, being duly sworn, deposes and says:

1. I am a partner in Cohn, Glickstein, Lurie, Ostrin & Lubell, the attorneys for IRANIAN SHIPPING LINES, S.A., (ISL) the cross-claimant in this action, and I am fully familiar with all of the proceedings heretofore had herein and with the facts of this case. This affidavit is submitted in support of ISL's motion pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure to extend the time for filing the notice of appeal from a "judgment" filed November 13, 1976. As set forth below, there exist persuasive reasons herein for granting the extension provided for in said Rule 4(a).

2. Until January 13, 1977, when I received in the mail a copy of an affidavit from Howard Jacobs, Esq. referring to a judgment, no notice whatsoever had been given to me or my law firm that a judgment was to be settled or had been entered. On the contrary, as noted below, both the absence of any such notice and notice of other matters pertaining to this litigation demonstrated that there apparently was no judgment proposed or entered.

3. As stated above, on January 13, 1977 I learned for the first time that Judge Werker had signed a judgment in this matter dismissing the cross-claim of ISL on November 16, 1976, and that this judgment had been entered on November 17, 1976.

for the Southern District of New York, which notice was dated 347a
November 30, 1976. During the same period I received a Notice
of Motion for Allowance, dated November 30, 1976, and bearing
the title IRANIAN SHIPPING LINES, S.A. v. PETER MORAITES, et
al., which was the title of the cross-claim which had been
dismissed, unbeknownst to me, on November 17, 1976.

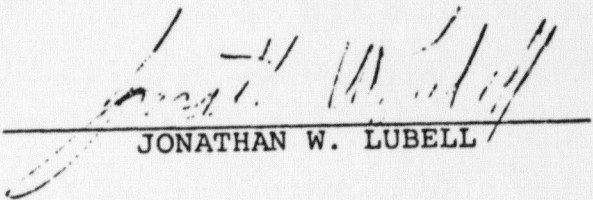
7. I verily believe that ISL has sound and com-
pelling grounds for contending that ARYA's motion for summary
judgment should not have been granted and that, therefore, the
judgment should be reversed on appeal. After receipt of
ARYA's reply papers on its motion, which raised additional
contentions, I asked the Court on July 20, 1976 for an
opportunity to briefly present certain matters relevant to a
determination of the motion. By letter, dated July 28, 1976,
I was informed that the Court would not permit me to submit
any additional papers on the pending motion.

8. The reason why the present application is made
by order to show cause is that Rule 4(a), FRAP, permits an
extension of time for filing the notice of appeal for a period
not to exceed 30 days from the expiration of the 30 day period
within which a notice of appeal must normally be filed in a
civil case. The 60 day period ends Sunday, January 16, 1977.
Under Rule 26, FRAP, the last day for filing the notice of
appeal if a 30 day extension is granted under Rule 4(a),
is Monday, January 17, 1977. Therefore, this application seeks
an order from the Court extending the time to file a notice of
appeal to and including January 17, 1977. A copy of the pro-
posed notice of appeal is annexed hereto as Exhibit 2. If the
judgment is deemed to comply with Rule 54(b), FRCP, and this

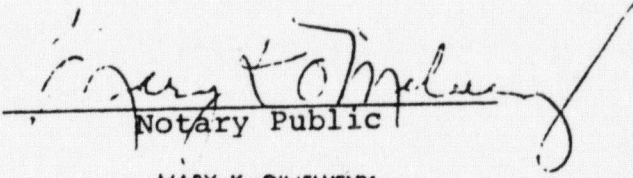
application is denied, then ISL may be denied a valuable right 348a
without notice or due process.

9. No previous application has been made for the relief herein sought.

WHEREFORE, I respectfully request that the order to show cause be signed and that ISL be permitted to file its notice of appeal on January 17, 1977, pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure, upon the grounds that a showing of excusable neglect under that Rule has been established by the facts herein.


JONATHAN W. LUBELL

Sworn to before me this
14th day of January, 1977.


Notary Public

MARY K. O'MELVENY
Notary Public, State of New York
No. 31.8219570
Qualified in New York County
Commission Expires March 30, 1978

MEMORANDUM OF NICK C. SPANOS IN OPPOSITION FOR
MOTION FOR ALLOWANCE (pp. 349a-351a)

Jan. 17, 1977 349a
Jan 17, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IRANIAN SHIPPING LINES, S.A., :
Plaintiff, :
- against - :
PETER MORAITES, et al., :
Defendants. :

72 Civ. 1392

-----x
RODOLFO V. ALOSIO, :
Plaintiff, :
- against - :
IRANIAN SHIPPING LINES, S.A., et al., :
Defendants. :

-----x
MEMORANDUM OF THIRD-PARTY
DEFENDANT OPPOSING ALLOWANCE OF FEES
TO SPECIAL MASTER

Third-party defendant herein NICK C. SPANOS ("SPANOS")
opposes any allowance of fees to Samuel C. Coleman, Esq.
("Mr. Coleman") for services Mr. Coleman claims to have
rendered in the above-captioned cases pursuant to certain
orders of this Court. SPANOS adopts and bases his opposition
to such allowance on all the grounds and arguments previously
made herein by plaintiff and cross-claimant IRANIAN SHIPPING
LINES, S.A. ("ISL"), and relies on the recitals contained in

the affidavit sworn to by SPANOS on December 10, 1976 (the "December 10 Affidavit") previously filed herein by ISL.

350a

SPANOS also joins in the request of ISL for a hearing to determine whether or not Mr. Coleman did in fact do any one or more of the things ascribed to him in the December 10 Affidavit, and in that regard respectfully calls to the attention of the Court the decision of the Supreme Court of the United States in Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 66 S.Ct. 1170, 90 L.Ed. 1447 (1945).

In that case the court below had appointed a special master to conduct an investigation and hold hearings in order to determine whether certain judgments had been procured by fraud on the trial court, and designated certain attorneys who had participated in the trial to act as amici curiae in connection with such investigation and hearing. Questions were thereafter raised as to the manner in which the investigation and hearing were conducted and as to the fees awarded the amici curiae.

The Supreme Court granted certiorari because it deemed that "Questions of importance in judicial administration were obviously involved" and as to the conduct of the investigation and hearing the Supreme Court stated as follows:

"The inherent power of a federal court to investigate whether a judgment was obtained by fraud, is beyond question. Hazel-Atlas Glass Co.

v. Hartford-Empire Co., 322 U.S. 238, 68 L.Ed. 1250, 64 S.Ct. 997. The power to unearth such a fraud is the power to unearth it effectively. Accordingly, a federal court may bring before it by appropriate means all those who may be affected by the outcome of its investigation. But if the rights of parties are to be adjudicated in such an investigation, the usual safeguards of adversary proceedings must be observed." (328 U.S. at 580, 90 L.Ed. at 1452)

Respectfully submitted,

NICHOLAS J. P. TRYFOROS
Attorney for Third-Party
Defendant NICK C. SPANOS
Empire State Building
New York, NY 10001
(212) 564-5648

NOTICE OF MOTION FOR EVIDENTIARY HEARING
(pp. 352a-354a)

352a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IRANIAN SHIPPING LINES, S.A.,	:	
a corporation,	:	72 Civ. 1392 (HFW)
	:	67 Civ. 9
Cross-Claimant,	:	
- against -	:	<u>NOTICE OF MOTION</u>
PETER MORAITES, et al.,	:	
Impleaded Defendants,	:	

-----x

S I R S :

PLEASE TAKE NOTICE that on the 18th day of February, 1977, third-party defendant NICK C. SPANOS, upon the motion filed herein December 2, 1976, by Special Master Samuel C. Coleman for an allowance of fees and upon the affidavit and memorandum filed herein on December 10, 1976, by plaintiff and cross-claimant IRANIAN SHIPPING LINES, S.A. ("ISL") opposing said motion and any allowance of fees; and the affidavit filed herein on December 22, 1976, by the intervening plaintiffs opposing said motion and any allowance of fees; and the memorandum of third-party defendant NICK C. SPANOS filed herein on January 17, 1977, also opposing said motion and any allowance of fees; and upon the affidavit of Philip Pierce, Esq., on behalf of the "so-called Manta defendants" sworn to and served on December 13, 1976, supporting said motion and allowance; and the affidavit of Howard Jacobs, Esq., on

behalf of Guaranty Bank and Trust Company filed herein on January 12, 1977, in support of said motion and allowance; and upon the memorandum submitted herewith; and upon all prior proceedings had and papers filed herein, will move this Court before the Hon. Henry F. Werker at the United States Courthouse, Foley Square, New York, New York, at 10:00 o'clock in the forenoon for an Order pursuant to Fed. R. Civ. P. 83, directing that evidentiary hearings be held on the issues raised by said motion for an allowance and the affidavits, memorandums and papers opposing or supporting said motion.

The grounds for this motion are that the to-date-undenied charges in ISL's opposing affidavit raise serious questions as to whether fraud has been practiced on the Court and the parties and whether the proceedings in this litigation to date have departed from the due process principles of equity and fairness which control the administration of justice in the Federal Courts, thus making adversary hearings necessary so that the Court can be informed as to such charges and, in the event any charges are true, can act to correct any resulting injustice or prejudice suffered by any party and ensure the full enjoyment henceforth by each party litigant herein of all the rights and safeguards which the due process principles of equity and fairness controlling the administration of justice in the Federal Courts, require.

Dated: New York, New York
January 24, 1977

Yours, etc.

NICHOLAS J. P. TRYFOROS
Attorney for Third-Party Defendant
NICK C. SPANOS
Empire State Building, 72nd Floor
350 Fifth Avenue
New York, NY 10001
(212) 564-5648

TO: Samuel C. Coleman, Esq.
All Counsel

THIRD PARTY DEFENDANT'S MEMO IN SUPPORT OF MOTION FOR EVIDENTIARY 355a
HEARING (pp. 355a-357a)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IRANIAN SHIPPING LINES, S.A.,	:	
a corporation,	:	72 Civ. 1392 (HFW)
	:	67 Civ. 9
Cross-Claimant,	:	
- against -	:	
PETER MORAITES, et al.,	:	
Impleaded Defendants,	:	

-----x

THIRD-PARTY DEFENDANT'S MEMORANDUM
IN SUPPORT OF HIS MOTION THAT
EVIDENTIARY HEARINGS BE ORDERED

Special Master's motion for an allowance recited that he had been awarded and paid a fee of \$15,000 for services rendered pursuant to a stipulation between the "so-called Manta defendants" and the intervening plaintiffs. That stipulation called for each of the stipulating parties to pay one half of whatever fee the Special Master was awarded for those particular services. The Special Master's motion now seeks a fee for different services, not covered by any stipulation, and asks the Court to decide what fee and what parties shall pay such fee.

IRANIAN SHIPPING LINES, S.A. ("ISL"), on December 10, 1976, filed its opposition to the motion and to any award of fees to the Special Master; its opposing affidavit made many serious charges against the Special Master and denied that the Manta defendants had paid their 50 percent share of the \$15,000 fee previously awarded. Thereafter the intervening

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plaintiffs on December 22, 1976, filed an affidavit opposing any award of fees and confirming that they had paid their share of the \$15,000 previously awarded. Philip Pierce, Esq., on behalf of the so-called Manta defendants executed and served an affidavit on December 13, 1976, stating only that Manta defendants "do not oppose the granting of...a reasonable allowance...but request that any such award be duly apportioned...among the parties in interest".

If, as ISL asserts, the Mantas have not paid their half of the \$15,000 fee previously awarded, which the Court and the intervening plaintiffs understood was to be shared equally by Mantas and the intervening plaintiffs, then an unthinkable fraud has been practiced on the Court and the intervening plaintiffs.

In all fairness to the Special Master, the Mantas should have promptly produced for inspection by the Court and parties the original of their \$7,500 cancelled check so that (assuming the genuineness of the item submitted) at least this issue of fact could be disposed of.

Instead, they did nothing and have remained silent, even in the face of intervening plaintiffs' implicit reminder in their opposing affidavit that the question (i.e., whether the Mantas had paid their share of the \$15,000 fee) had been raised. In such a context, the Mantas' silence and failure to produce their original cancelled check amount to an admission that the Mantas did not pay.

357a

If the charges in the December 10, 1976, affidavit are true, then the due process standards of fairness which are supposed to control the conduct of judicial officers and the administration of justice in the Federal Courts have been breached, and the rights of the litigants, including this third-party defendant, have been seriously infringed. It is respectfully submitted that it is the duty of this Court to protect those standards and rights and to correct any resulting prejudice suffered by any party. Fitzgerald v. United States Lines Co., 374 U.S. 16, 20-22, 83 S.Ct. 1646, 1650-1651 (1963), reversing 306 F.2d 461 (2d Cir., 1962); Crites v. Prudential Ins. Co., 322 U.S. 408, 413-418, 64 S.Ct. 1075, 1079-1081 (1944).

The authorities previously cited by third-party defendant and ISL establish that third-party defendant (whose rights are sought to be affected by the Special Master's motion) is entitled to a hearing on the charges against the Special Master, and that such hearing must be an adversary proceeding. It is therefore respectfully submitted that third-party defendant's motion should in all respects be allowed.

Dated: New York, New York
January 24, 1977

Respectfully submitted,

NICHOLAS J. P. TP-FOROS
Attorney for Third-Party Defendant
NICK C. SPANOS
Empire State Building, 72nd Floor
350 Fifth Avenue
New York, NY 10001
(212) 564-5648

ORDER DATED JANUARY 28, 1977

358a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(RP. 358a-359a)

RUDOLPH V. ALOSIO,

Plaintiff,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Defendants.

ATLANTIC STEAMERS SUPPLY CO.,
INC. OF PENNSYLVANIA, et al.,

First Intervening Plaintiffs,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants.

IRANIAN SHIPPING LINES, S.A., a
corporation,

Cross-Claimant,

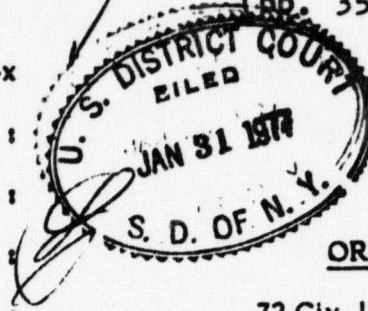
- against -

PETER MORAITES, et al.,

Impleaded Defendants.

HENRY F. WERKER, D. J.

On January 26, 1977, third-party defendant Nick C. Spanos filed a notice of motion and supporting memorandum for an order directing that an evidentiary hearing be held on Special Master Samuel C. Coleman's motion for an



ORDER

72 Civ. 1392 (HFW)

MICROFILM
JAN 3 1977

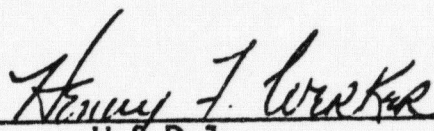
allowance of fees. which motion was filed on December 1, 1976 and noticed for a hearing on December 13, 1976.

The Spanos motion is untimely, having been made well after the return date of the Special Master's application and without having seasonably requested any extension of the time in which to respond thereto. Moreover, it fails to comply with the established procedures of this court in that no pre-motion conference was requested prior to the making of the motion.

It is therefore ORDERED that the Spanos motion for an evidentiary hearing be, and it hereby is, denied.

SO ORDERED.

DATED: New York, New York
January 28, 1977



U. S. D. J.

gws PREARGUMENT CONFERENCE DATED FEBRUARY 4, 1977
(pp. 360a-376a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: RUDOLPH ALOSIO,
:

Plaintiff, :

-against- :

67 Civ. 9.

IRANIAN SHIPPING LINES, et al., :

Defendants. :

-----X
Before:

HON. HENRY F. WERKER,

District Judge.

New York, February 4, 1977;
10.45 o'clock a.m.

Present:

EDWARD BERMAN, Esq.,
THOMAS CRAIG, Esq.,
PAUL HOPKINS, Esq.,
JAMES WEIDNER, Esq.,
JEFFREY M. WEISSMAN, Esq.,
HOWARD L. JACOBS, Esq.,
PHILIP PIERCE, Esq.,
JAMES THOMPSON, Esq.,
WILLIAM HONAN, Esq.,
JOHN REILLY, Esq.,
DAVID SIMON, Esq.,
HOWARD CERNY, Esq.,
JONATHAN LUBELL, Esq.,
RICHARD GYORY, Esq.,
ROBERT R. KREIS, Esq.,
THEODORE P. DALY, Esq.,
NICK C. SPANOS, Esq.,
NICHOLAS J. P. TRYFOROS, Esq.,

1 THE COURT: Mr. Lubell.

2
3 MR. LUBELL: First, your Honor, I would like
4 to address my remarks to the motion that ISL had brought
5 on for an extension of time under the Federal Rules of
6 Appellate Procedure, Section 4-A.

7 We have submitted two affidavits by myself
8 and one by an associate in my office. We have submitted
9 a memorandum of law.

10 I believe that the circumstances in this case,
11 your Honor, present a compelling case of excusable neglect.
12 At no time, as indicated in those papers, did we receive
13 any notification from the Clerk of this Court of either
14 the entry of the opinion or of the judgment on summary
15 judgment. Every other time that anything has been
16 entered that I know of on this docket, we have received
17 a postcard from the Clerk. On these two occasions we
18 did not.

19 There was reported in the Law Journal the
20 entry of an in Alosio versus Iranian Shipping Lines.

21 I submitted to my service a slip to obtain a
22 copy of that order and a copy of that order was returned to
23 me of the consolidation order that your Honor entered in
24 Alosio. Apparently Alosio had made a motion on applica-
25 tion for consolidation. There never was a notice in the

1 Law Journal of either an order, opinion or judgment of
2 any other action in the case ISL against Maraites, which
3 was the caption and the name of the case on which the
4 summary judgment motion was brought until I believe it was
5 January 14th of this year, when in an affidavit submitted
6 by Mr. Jacobs on Mr. Coleman's application for fees, he
7 mentioned that there had been a judgment entered. I did
8 not know, nobody in my firm knew that a judgment had been
9 entered. We had no notice of that any judgment or
10 decision had been entered.
11

12 I respectfully urge the Court to grant our
13 motion under all those circumstances. There as no
14 indication whatsoever, your Honor, that that motion, which
15 was a motion for summary judgment, which was a critical
16 motion in the entire complexion of the case, had been
17 decided and all appearances of the case was it was
18 proceeding.

19 The notice we got for this conference further
20 confirmed the fact that the case was proceeding.

21 THE COURT: Of course that doesn't necessarily
22 follow, Mr. Lubell.

23 All right, I will listen to whoever else wants
24 to talk.

25 MR. WEIDNER: Your Honor, I am James Weidner,

1 gws
2 a member of the firm of Rogers & Wells. We represent
3 Arya Shipping.

4 It was our motion for summary judgment which
5 your Honor has granted about which Mr. Lubell has spoken.
6 We have not submitted any answering papers to the motion
7 simply because I understood under your Honor's procedure
8 that today was a conference concerning the motion.

9 I have a short affidavit which I can submit and
10 would ask leave to submit a reply brief to the brief we
11 received yesterday from Mr. Lubell.

12 I think in response, however, to Mr. Lubell's
13 statement, perhaps it's appropriate to back up and get a
14 history of the case.

15 We made our motion for summary judgment in
16 July 1976. Subsequently answering and reply papers
17 were filed in court, as is your Honor's procedure. The
18 only orders that were entered in this case thereafter
19 were one in September which reopened Alosio and consolidated
20 it under the index number from Maraites, one in October,
21 which was the memorandum decision and order granting our
22 motion for summary judgment and one in November, that is
23 the judgment, on the memorandum, decision and order.

24 On each occasion, your Honor, those orders
25 and/or judgment were noted by the Court Clerk in the

docket sheets and on each occasion they were noted in the New York Law Journal either the next day or, if it was a Friday, the following day.

All the other counts in this action apparently had notice either from the Law Journal or from the docket entries or from the file itself of the entry of all three of those orders. At least I will speak for myself, and apparently Mr. Jacobs did, I gather from his submission to your Honor.

Mr. Lubell says that he had notice of the November judgment, that is the New York Law Journal entry concerning the November judgment; left open as to whether there was any notice as to the other two Law Journal entries.

In any event, as I understand what he says, at that time he asked a service to go to the Court, pick up a copy of the order, and what he gets back is an order entered in September, the first of the three orders.

I suggest that anyone who receives a notice entered in September in response to a Law Journal entry in November is put on notice that there are some substantial inconsistencies and it is at least incumbent upon the litigation, particularly when motions have been made to dismiss the entire case, to call opposing counsel, to

1 call the Court Clerk, to call chambers or at least to
2 send someone down to look at the docket entries, and if
3 any of those things have been done, it was quite apparent
4 exactly what orders had been entered. Apparently none
5 of those actions was taken.
6

7 One further thing. Mr. Lubell's reply
8 affidavit mentions some confusion between the Alosio case
9 and the Maraites case and whether orders were in or were in
10 the other. I think here we should recall that since
11 1973 when Judge Brieant entered an order, those two cases
12 have been consolidated and, furthermore, the very order
13 which Mr. Lubell received from the service in November was
14 your Honor's order reopening Alosio and consolidating
15 him under the Maraites index number. So I can't see
16 how there could possibly be any misunderstanding of any
17 counsel in this case that the two actions were inter-
18 related. Obviously you have to be aware of anything
19 going on in either of them. They are one and the
20 same.

21 In summary I suggest that while the record
22 may reflect some neglect, it is not excusable neglect in
23 the context of Rule 4-A of the Federal Rules of Appellate
24 Procedure. Any litigant has minimal duties to follow
25 the progress of his case. A motion for summary judgment

1 gws

2 was made in July. Apparently no effort was made to
3 follow the progress of the case in terms of checking the
4 docket entries or anything of the sort until the following
5 January despite the fact that the cross-claimants case
6 was obviously in jeopardy given the nature of the motion
7 that was filed.

8 Therefore, I respectfully request that the
9 motion for leave to file a notice of appeal late for
10 excusable neglect be denied.

11 THE COURT: All right. You submit your
12 papers.

13 Mr. Jacobs, do you wish to speak to this?

14 MR. JACOBS: No, your Honor.

15 THE COURT: All right.

16 MR. LUBELL: Your Honor, may I be heard just
17 for a couple of minutes?

18 One is if Rogers & Wells proposes to submit an
19 affidavit at this time, I would suggest that it is an
20 answering affidavit or an answering paper to our motion,
21 and I would ask leave to have a reply, permission to
22 submit a reply if I deem it necessary.

23 THE COURT: All right.

24 MR. LUBELL: Secondly, your Honor, insofar as
25 it is represented by Mr. Weidner that all attorneys had

1 notice, I know I didn't, I know nobody in my firm did.
2
3 I also know that one other firm who called me on a matter
4 of discovery in this case did not have notice. I didn't
5 check around and ask who else. I know Mr. Hochhauser
6 did not have notice of the decision or judgment in this
7 case. I don't know if anyone else did or did not because
8 I haven't inquired. It happened that he called me the
9 other day as to this conference.

10 THE COURT: Two occasions of neglect do not
11 make your neglect excusable.

12 MR. LUBELL: I am just correcting a statement
13 by Mr. Weidner that all attorneys had notice. That is
14 not an accurate statement, to my knowledge.

15 THE COURT: For what it's worth, Mr. Lubell.
16 You may have an opportunity to reply.

17 Have you served your papers today?

18 MR. LUBELL: No.

19 MR. WEIDNER: I have not, your Honor. I have
20 them here. I will serve them and I will prepare a brief
21 memorandum, if I can have a day or so to do so.

22 THE COURT: Fine, by Wednesday for your memo-
23 randum and by the following Monday for your reply if you
24 deem it necessary.

25 MR. WEIDNER: Yes, your Honor.

1 gws
2 MR. PIERCE: Philip Pierce. My firm repre-
3 sents the Manta defendants. We are in exactly the same
4 posture in that we thought today was the pre-motion confer-
5 ence. I have got an affidavit, but I would like the
6 same amount of time, if your Honor please, to submit a
7 responsive memorandum.

8 I wanted to state in court that the Manta
9 defendants fully support the argument just heard again,
10 the granting of leave. I wanted to point out the terms
11 of the times of the docket entries that we are talking
12 about here and the dates in the appearance of the Law
13 Journal.

14 September 24, 1976 was the docket entry recon-
15 solidating the cases under the title of Alosio and the
16 consolidating cases. That was September 24. It
17 appeared in the Law Journal of September 27, 1976.

18 October 21 was the docket date of your Honor's
19 memorandum decision by which the cross-claims were
20 effectively dismissed. That appeared on the 22nd in
21 the Law Journal.

22 November 17 was the docketing entry in this
23 Court's records of the judgment which appeared in the
24 Law Journal November 18. I think that speaks for itself
25 because I think if counsel argues that a notice received

1 gws
2 at a much later date caused him to believe that it
3 referred to a September event, two months earlier, he is
4 really confessing not just ignorance of the judgment but
5 ignorance of all three defenses. Otherwise there could
6 have been no confusion, your Honor.

7 THE COURT: All right. You have the same time,
8 Mr. Pierce.

9 MR. PIERCE: Thank you, sir.

10 THE COURT: All right.

11 Who else wants to speak?

12 MR. GYORY: Your Honor, I join in both Mr.
13 Weidner's and Mr. Pierce's remarks, but I also note that
14 we have received a notice of motion served two days ago by
15 Mr. Howard F. Cerny, who I believe is here. I hardly think
16 this motion at this stage on no notice virtually is an
17 appropriate proceeding.

18 I would certainly like to protest that.

19 THE COURT: That notice of motion was served,
20 of course, and wasn't served in accordance with my rule.
21 I will accept it and I will give you an opportunity to
22 answer it if you wish to, whoever wishes to respond to it.
23 I will ask for an answer within two weeks.

24 I will tell you that I do not think that there
25 is an occasion for a reply.

THE COURT: No. I think when we make motions we ought to put everything we have in the motions. I will not receive a reply on that motion.

I am reading the record currently in order to determine in my own mind whether those accusations are substantiated by the record, and I do not see at this time any reason for a hearing with respect to that matter.

THE COURT: Yes.

MR. LUBELL: It is in there.

THE COURT: Right. That's what I have

gws

371a

denied, Mr. Lubell.

MR. LUBELL: I thought you denied the untimely motion of the third-party defendant Spanos.

THE COURT: I denied your request for a hearing.

MR. LUBELL: Your Honor, we made the request that the allegations required a factual hearing as part of a response to Mr. Coleman's motion. We were not in the motion of the third-party defendant.

THE COURT: I understand that. I understand that.

MR. LUBELL: You are denying our request ---

THE COURT: I am denying your request for a hearing, yes.

As I say, the allegations which are made and with respect to which a hearing is requested are such that I am reading the record to determine in my own mind whether any of them are substantiated. I can't possibly see how this objective testimony of persons who were present during the course of those hearings could in any way affect my decision.

MR. LUBELL: If I may just continue it for a minute, your Honor.

If your Honor comes to the conclusion the

1 record supports in part segments of the allegations in
2 the opposing affidavit, is your Honor saying that at that
3 time you would not have a hearing to further develop that
4 factual issue?
5

6 THE COURT: Mr. Lubell, don't throw zingers
7 at me, please. I am an old hand at that and you know
8 it.

9 If the Court should determine as a result of
10 reading the record that a hearing was necessary, one thing
11 the Court has in common with a woman, I can always change
12 my mind. But if I determine that it is not necessary,
13 I will make my decision with respect to the application
14 without a hearing.

15 With respect to my motion practice rules and
16 my authority to reject motions which are not brought in
17 accordance with them, I believe that I have the power
18 and authority to make the rules for the proper administra-
19 tion of my calendar, and if anyone disputes that, they
20 can take that up with the Circuit Court.

21 I would like to hear where we are with respect
22 to discovery, Mr. Lubell.

23 MR. LUBELL: In terms of the depositions,
24 there is an outstanding notice to depose that was served
25 by the Booth, Lipton firm concerning Nasser Afshar.

That is still outstanding; is that correct?

MR. PIERCE: Yes. After service of a notice of deposition on Mr. Afshar, I have spoken with Mr. Simon, his attorney, who I believe is here in court, and he informed me at that time that Mr. Afshar was traveling outside this country and he would get back to me if he was willing to be deposed. I have not heard since that time. I think that's a necessary event which must occur before any part of this trial can occur.

THE COURT: Who can respond as to whether, when and how?

MR. SIMON: Your Honor, Mr. Afshar, according to the last word I had from him, has no objection if arrangements will be made for a date for examination and a place suitable for Mr. Afshar, who is presently in the country. I am sure he will appear.

MR. PIERCE: If your Honor please, in terms of the present status of the action, which is subject to your Honor's ruling, if it is determined that the notice of appeal will not be allowed to be filed belatedly, the cross-claims have fallen and we are left with only what was to have been initially today's business on the Alosio case alone. It is in connection with that that I wanted to depose Mr. Afshar. I will want to depose him in the

1 cross-claims if that persists or remains as a viable
2 entity here.
3

4 I would like to make that date in open court
5 so that we can get it done, have a deposition.

6 THE COURT: Make the date.

7 MR. PIERCE: Okay.

8 THE COURT: Right now. When?

9 MR. SIMON: Your Honor, I would like to consult
10 with Mr. Afshar and I can do that today.

11 MR. PIERCE: Fine. Call me back.

12 THE COURT: I would say while you depose him,
13 that would cover the whole field.

14 MR. LUBELL: Your Honor, there are pending
15 a number of requests to admit, some of which have been in
16 part answered, many of which have been the subject of
17 objections.

18 In addition, there are several sets of
19 interrogatories propounded which have not been responded
20 to. I might indicate that.

21 I think part of the reason for the delay had
22 to do with the pending summary judgment motion. I don't
23 have at my fingertips which party has not responded --

24 THE COURT: Who has not responded and why not?
25 Can anybody respond to that?

1 gws
2 MR. WEIDNER: There I can say for Arya
3 Shipping, there were outstanding interrogatories for
4 Arya Shipping, both to them and from them to the plaintiffs.
5 They haven't been answered simply because I understood
6 the case insofar as it involved Arya had been dismissed
7 and there was no further need to proceed either way on
8 those set of interrogatories.

9 MR. GYORY: Your Honor, speaking for my whole
10 firm, we had served interrogatories but had not received
11 responses. Again I feel it's academic, in view of the
12 dismissal, we would not be concerned further.

13 MR. PIERCE: One other note if I may, your
14 Honor. It is my intention as soon as I get certain
15 documents that I have requested from Mr. Porro's office
16 and as soon as I accomplish this deposition of Mr. Afshar,
17 I expect to move for summary judgment in that portion of
18 the case. I don't know whether it's premature or not
19 to bring that to the Court's attention. I think it is
20 a proper case for summary judgment against the plaintiff
21 in that case. And I will so move.

22 THE COURT: All right.

23 We don't appear to be that much nearer to a
24 termination of discovery here.

25 What has happened with all the documents that

1 gws

2 some of the parties wanted to examine and we couldn't
3 get to until Mr. Spanos was available?

4 MR. LUBELL: That has been done.

5 THE COURT: That's all been done, has it?

6 MR. LUBELL: Yes.

7 THE COURT: To everyone's satisfaction, I
8 trust.

9 I take it, since there is no response, that
10 it's to everyone's satisfaction and that's a cut off period.

11 All right. What I will do in order to give
12 me an opportunity to decide the motions, I am going to put
13 this down for a date 90 days hence for further conference.
14 You will not get further notice of it.

15 May 6 at 10 o'clock.

16 All right, gentlemen. Thank you.

17 ---

JAMES B. WEIDNER, being duly sworn, deposes and says:

1. I am a member of Rogers & Wells, attorneys for impleaded defendant Arya Ship Lines, S.A. ("Arya") and I am fully familiar with the relevant proceedings herein. I submit this affidavit in opposition to the motion of Iranian Shipping Lines, S. A. ("ISL") to extend to January 17, 1977 the time for filing a notice of appeal from the judgment, filed November 17, 1976, dismissing the purported cross-claim herein.

2. ISL bases its motion upon a claim of "excusable neglect" (F.R.App.P. 4(a)). As will appear, if there was neglect by ISL in failing - for nearly 60 days - to appeal from the instant judgment, the neglect cannot properly be characterized as "excusable". Accordingly, the motion should be denied.

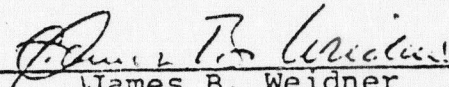
The Relevant Orders

3. By notice of motion dated June 22, 1976, returnable July 19, 1976, Arya (and, later, certain other defendants) moved for summary judgment, dismissing the purported cross-claim, upon the ground that ISL, the purported cross-claimant had been dissolved under applicable Iranian law. Answering papers and Reply papers were thereafter submitted in accord with the written directions of the Court.

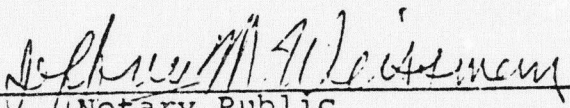
4. The only orders which were filed thereafter in this litigation were the following:

(a) An Order dated September 16, 1976, which ordered that the action Rudolph V. Alosio v. Iranian Shipping Lines, S. A., et al., 67 Civ. 9 (HFW), "be reopened and carried as a consolidated action under docket number 72 Civ. 1392",

failure to comply with the plain requirements of the Federal 378a
Rules for filing a notice of appeal. Accordingly, this motion
should be denied.


James B. Weidner

Sworn to before me this 9th
day of February, 1977.


Notary Public

LAW OFFICES
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1370 AVENUE OF THE AMERICAS
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STEPHEN L. FINE
NEAL I. GANTICHER
LAURENCE R. KRUTECK
DAVID G. LUBELL
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JEROME B. LURIE
MARY K. GIMELVENY
M. HOWARD OSTRIN
PHILIP D. TOBIN

ANTHONY J. DISTINTI, JR.
SAMUEL L. ESTREICHER
AUDREY J. ISAACS
NEIL D. LIPTON
BARBARA S. MEHLISACK
ROBERT W. PARTNOY
ELLIOTT D. SHRIFFMAN
JEAN TAYLOR
ROY N. WATANABE

LETTER FROM LUBELL DATED FEBRUARY 14, 1977

AREA CODE 212
717-4000
CABLE ADDRESS
"COHOLICK" 379a

IRVING MOROSS
OF COUNSEL

February 14, 1977

BY HAND

Hon. Henry F. Werker
United States District Judge
Southern District of New York
United States Courthouse
40 Centre Street
New York, New York 10007

Re: Alosio v. Iranian Shipping Lines, S.A., et al.
(HFW)

Dear Judge Werker:

In the second mail today and as I was preparing to have filed with the Court ISL's papers in reply to the papers of Arya, I received a memorandum and affidavit from the attorneys for the Manta defendants. It is my understanding that these papers should have been served upon me on Wednesday, February 9, in accordance with your Honor's direction at the court hearing on February 4.

I respectfully urge your Honor to disregard the papers now submitted by the attorneys for the Manta defendants. In the event that you intend to refer to those papers, I request time to reply to the affidavit and memorandum received this day.

Respectfully,

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL

/s/
Jonathan W. Lubell

JWL:jg

cc: Booth, Lipton & Lipton

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
RUDOLPH V. ALOSIO, :

Plaintiff, :

- against - :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :
-----x

ATLANTIC STEAMERS SUPPLY CO., :
INC. OF PENNSYLVANIA, et al., :

First Intervening Plaintiffs, :

- against - :

IRANIAN SHIPPING LINES, S.A., et al., :

Second Defendants. :
-----x

IRANIAN SHIPPING LINES, S.A., a :
corporation, :

Cross-Claimant, :

- against - :

PETER MORAN, et al., :

Impleaded Defendants. :
-----x

APPEARANCES: (See last page)

HENRY F. WERKER, D. J.

Copied
MEMORANDUM

AND ORDER

72 Civ. 1392 (HPW)

This is an application for an allowance made by the Honorable Samuel C. Coleman for services rendered as a Special Master under two orders of appointment made by the Honorable Charles L. Bricant, Jr., United States District Judge, on September 29, 1972.

The first order of that date was made for purposes of seeing to "the matter of compliance by Nick C. Spanos with the subpoena previously issued to him to appear as a witness to give oral testimony," and it appointed Judge Coleman "as Special Master to discharge his duties concurrently with his prior appointment by Judge Gurfein in 67 Civ. 9."¹

The second order provided that "the responsibilities of reference shall be discharged concurrently with the prior reference to Judge Coleman in relation to Iranian Shipping Lines, S.A., previously ordered by Judge Gurfein of this Court."

By stipulation Judge Coleman had been appointed to preside over the taking of certain depositions on September 9, 1971. While that appointment was said to be by consent it was made because the parties could not agree upon a person to act as Special Master and the appointment was made by the Part I Judge, then District Judge Murray I. Gurfein.

The second order was made for purposes of hearing and reporting "whether jurisdiction exists pursuant to § 302(a)(1)(2) of the New York C.P.L.R. as applied by Rule 4(1) F.R.Civ. P. or otherwise, and whether venue is proper." over Guaranty Bank & Trust Company ("Guaranty Bank").

Opposition to the allowance is made by Nick C. Spanos on behalf of Iranian Shipping Lines, S.A. ("Iranian Shipping") and presumably on his own behalf and by the intervening plaintiffs.

I have examined the affidavits, the Report of the Special Master and the objections thereto, the Supplemental Report of the Special Master, the exhibits and the transcripts² with respect to this matter and I find the following:

1. that the parties now claiming that the references were unauthorized (a) have waived that claim by participating in the hearings; (b) that if the claim is based upon a failure to find that these matters were complicated it is

frivolous since the original reference clearly indicates that the parties themselves believed these matters to be complicated; (c) that the issues of jurisdiction and venue in this case were complicated issues; and (d) that the hearings held were necessary.

2. that the claims of bias and incompetence on the part of Judge Coleman are unfounded.

3. that the opposing parties participated in the hearings, examined witnesses produced by the Guaranty Bank and the "Manta Group" and in effect utilized the hearings which they claim were not necessary to carry on discovery on the merits.

Examination of the transcripts indicates to this court that the Special Master conducted himself in a judicial manner without temperament and with infinite patience.

This court has previously held that no hearing would be held with respect to this application upon the ground that no issue has been presented with respect to the number of hours alleged by Judge Coleman to have been spent. The only issues raised with respect to this application were whether it was necessary to hold hearings and whether the Special Master's Report and Supplemental Report were proper. The examination of the record indicates that the hearings were necessary. The question of the propriety of the Special Master's reports was one for appeal after the District Judge approved the report, and it may not be raised now.

As a consequence, an allowance of \$2,000 is made with respect to the Spanos deposition to be assessed against Nick C. Spanos; and an allowance of \$9,000 is made with respect to the Guaranty Bank jurisdiction and venue motion to be taxed as costs to abide the event. Moreover, there being no just reason for delay,

the Special Master is directed to submit a judgment as to the \$2,000 allowance against Nick C. Spanos within 30 days. This is the decision and order of the Court. No further order is required.

SO ORDERED.

DATED: New York, New York
February 25, 1977

Henry J. Walker
U. S. D. J.

ALOSIO v. IRANIAN SHIPPING LINES, S.A., et al.
72 Civ. 1392 (HFW)

NOTES

1. Alosio v. Iranian Shipping Lines, S.A., 67 Civ. 9, was subsequently consolidated with Iranian Shipping Lines, S.A. v. Moraites, 72 Civ. 1392, by memorandum and order entered on December 19, 1973.
2. Transcripts read by the court in connection with the application and the affidavits in opposition thereto are as follows:

1. December 7, 1972	10:30 a.m. to 3:55 p.m.
2. January 4, 1973	10:40 a.m. to 4:45 p.m.
3. January 5, 1973	10:30 a.m. to 1:45 p.m.
4. February 26, 1973	11:10 a.m. to 4:30 p.m.
5. February 27, 1973	10:40 a.m. to 4:35 p.m.
6. February 28, 1973	10:40 a.m. to 1:35 p.m.
7. March 7, 1973	2:30 p.m. to 2:35 p.m.
8. March 9, 1973	1:00 p.m. to 3:45 p.m.

I have also read the deposition of Stephen A. Manta taken March 4, 1970.

ORDER OF WERKER, D.J. DATED MARCH 14, 1977

385a

(pp. 385a-386a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
RUDOLPH V. ALOSIO,

Plaintiff,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Defendants.

ORDER

72 Civ. 1392 (HFW)

-----x
ATLANTIC STEAMERS SUPPLY CO.,
INC. OF PENNSYLVANIA, et al.,

First Intervening Plaintiffs,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants.

-----x
IRANIAN SHIPPING LINES, S.A., a
corporation,

Cross-Claimant,

- against -

PETER MORAITES, et al.,

Impleaded Defendants.

-----x
HENRY F. WERKER, D. J.

WHEREAS the court has, sua sponte, made amendments to its
Memorandum and Order dated February 25, 1977 and entered February 28, 1977, and
WHEREAS those changes are reflected in a Memorandum and Order

of the court issued today, March 14, 1977, it is hereby

ORDERED that the court's Memorandum and Order of February 25, 1977 be, and it hereby is, vacated and withdrawn.

SO ORDERED.

DATED: New York, New York

March 14, 1977

Henry F. Hartke

U. S. D. J.

MEMORANDUM AND ORDER OF WERKER, D.J., DATED MARCH 14, 1977
(pp. 387a-388a)

387a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
RUDOLPH V. ALOSIO,

Plaintiff,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Defendants. :
-----x

ATLANTIC STEAMERS SUPPLY CO.,
INC. OF PENNSYLVANIA, et al.,

First Intervening Plaintiffs,

- against -

IRANIAN SHIPPING LINES, S.A., et al.,

Second Defendants. :
-----x

IRANIAN SHIPPING LINES, S.A., a
corporation,

Cross-Claimant,

- against -

PETER MORAITES, et al.,

Impleaded Defendants. :
-----x

MEMORANDUM AND

ORDER

72 Civ. 1392 (HFW)

This is an application for an allowance made by the Honorable Samuel C. Coleman for services rendered as a Special Master under two of three orders of appointment made by the Honorable Charles L. Brieant, Jr., United States District Judge, on September 29, 1972.

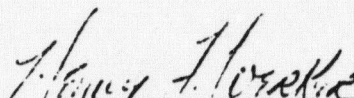
The first order arose in connection with Judge Brieant's decision to

parties to the action." However, I see no equitable basis upon which to allocate the costs of discovery among them in the first instance.

Accordingly, I have decided to tax the allowance to the Special Master under both orders of reference as costs to abide the event and I hereby allow the sum of \$11,000 as the Special Master's compensation under Rule 53(a) of the Federal Rules of Civil Procedure.³ This is the decision and order of the Court. No further order is required.

SO ORDERED.

DATED: New York, New York
March 14, 1977



U. S. D. J.

MEMORANDUM DECISION OF WERKER, D.J., DATED APRIL 5, 1977 389a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(pp. 389a-399a)

-----x
RUDOLPH V. ALOSIO, :

Plaintiff, :

- against - :

IRANIAN SHIPPING LINES, S.A., et al., :

Defendants. :

MEMORANDUM DECISION

72 Civ. 1392 (HFW)

-----x
ATLANTIC STEAMERS SUPPLY CO., :
INC. OF PENNSYLVANIA, et al., :

First Intervening Plaintiffs, :

- against - :

IRANIAN SHIPPING LINES, S.A., et al., :

Second Defendants. :

-----x
IRANIAN SHIPPING LINES, S.A., a :
corporation, :

Cross-Claimant, :

- against - :

PETER MORAITES, et al., :

Impleaded Defendants. :

-----x
APPEARANCES: (See last page)

HENRY F. WERKER, D. J.

Iranian Shipping Lines, S.A. ("Iranian") moves, pursuant to Rule 4(a) of
the Federal Rules of Appellate Procedure, for an order extending for thirty days

the time for the filing of its notice of appeal from this court's judgment dismissing Iranian's cross-claim. Iranian's motion, based upon its contention that any delay in filing a timely notice is attributable to "excusable neglect" within the meaning of Rule 4(a), follows the court's earlier refusal to sign an Order to Show Cause why the filing time should not be extended. Also before the court is a cross-motion by the firm of Levin, Kreis, Ruskin & Gyory, acting on behalf of Robert Kreis and pro se, seeking to strike from the record Iranian's notice of appeal.

The facts surrounding these motions are rather straightforward. On October 19, 1976, the court issued a memorandum decision, subsequently entered on October 21, 1976, dismissing Iranian's cross-claim on the ground that neither Nick C. Spanos nor Iranian could maintain it under controlling Iranian law.¹ Thereafter, on November 16, 1976, the court approved a form of judgment which was signed and entered by the Clerk of the Court (the "Clerk") on November 17, 1976. The New York Law Journal (the "Journal") published notice of the memorandum decision and of the judgment respectively under the heading "Orders signed" (and the caption "Alosio v. Iranian Shipping Lines, S.A."), in the October 22 and November 18, 1976 issues of the Journal. However, it is unclear whether any of the parties received postcards from the Clerk advising them of the two docket entries, as Rule 77(d) of the Federal Rules of Civil Procedure requires.²

Iranian's counsel ("counsel") contends that he received no notice of either the memorandum decision or the judgment from either the Clerk of the Court or any party to the action prior to January 13, 1977, when he received a copy of an affidavit which made reference to the court's judgment. Nevertheless, counsel concedes that he saw the Journal entry of November 18, 1976 and notes that it prompted him to request a copy of the relevant order from his "service." Rather than submitting a copy of the judgment, however, the service mistakenly supplied a

facsimile of an order dated September 16, 1976, reopening Alosio v. Iranian Shipping Lines, S.A., No. 67-9 (S.D.N.Y., filed Jan. 3, 1967), which had been marked closed due to administrative error, and reaffirming that it was consolidated for all purposes with Iranian Shipping Lines, S.A. v. Moraites, No. 72-1392 (S.D.N.Y., filed Apr. 5, 1972), under the latter action's docket number.² Notice of that order had appeared in the Journal issue of September 27, 1976, and counsel makes no claim that he did not see it at that time.

A notice of appeal was filed on January 14, 1977, the day after counsel received an affidavit advertng to the judgment. Since this was 58 days after entry of the judgment, the notice will only be timely if Iranian's motion is granted.

DISCUSSION

Rule 4(a) states that

[u]pon a showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the [30 days from the date of the entry of the judgment or order appealed from].

However, the district court need not extend relief to every litigant seeking to excuse its failure to file a notice of appeal within the required period. Rather, the grant or denial of a Rule 4(a) motion is a matter committed to the discretion of the district court and is reversible only for an abuse of that discretion. Lowry v. Long Island Rail Road Co., 370 F.2d 911, 912 (2d Cir. 1966); Nichols-Morris Corp. v. Morris, 279 F.2d 81, 83 (2d Cir. 1960).

Counsel contends that excusable neglect has been shown here by virtue of (1) the Clerk's alleged failure to mail postcard notices of the memorandum decision and judgment, (2) confusion as to the meaning of the Journal entries, (3) the failure to give notice that a judgment was to be settled, and (4) the continued receipt of other documents bearing upon this litigation. Iranian has clearly

demonstrated neglect; the question is whether its showing rises to the level of excusable neglect.

With respect to the Clerk's alleged failure to mail notice of either the memorandum decision or the judgment, Rule 77(d) of the Federal Rules of Civil Procedure states that the Clerk "shall" serve notice by mail "immediately upon the entry of an order or judgment." Despite such imperative language, however, the rule goes on to state that the absence of such notice "does not . . . authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure." Rule 4(a), of course, merely contains the excusable neglect standard previously set forth.

Thus, the wording of the two rules fails to establish whether the Clerk's failure to mail notices constitutes only "a significant factor" in favor of granting an extension, as Iranian contends is the case, or an express exclusion from the range of excuses acceptable under Rule 4(a), as the parties opposing Iranian's motion suggest. Compare 7 Moore's Federal Practice ¶ 77.05 (2d ed. 1975) with In re Morrow, 502 F.2d 520 (5th Cir. 1974) (dictum). Although the court agrees with counsel that Rule 77(d) cannot be read to exclude all motions to extend the filing time predicated upon the Clerk's failure to mail notice of docket entries, see Note of the Advisory Committee on Rules, 1946 Amendment to Rule 77(d), Federal Rules of Civil Procedure, the need for judgments to be accorded finality does dictate that errors by the Clerk not be a mandatory basis for extensions of time in which to file a notice of appeal. Id. Accordingly, each case should be considered on its own merits.

Counsel here claims to have lacked notice of the judgment prior to January 13, 1977, however, the court considers such ignorance unjustified. If counsel had notice of the September 16, 1976 order's entry from any source prior to

receiving a copy of it from his service in November of 1976, counsel must have known of the service's error and, therefore, should have inquired further in an effort to procure the proper document. In the alternative, if counsel never received notice of the September order from the Clerk, learning of its entry in November — some two months after the fact — certainly should have apprised him that something had gone awry in the Clerk's office and that a review of the court docket was advisable. Under either alternative, examination of the court docket would have revealed the actual status of Iranian's cross-claim, thereby enabling it to act promptly to preserve its rights. Counsel's failure to undertake such a review constitutes a serious dereliction of duty.

This conclusion cannot be avoided merely because the Journal published notice of the court's memorandum decision and judgment under the heading "Orders signed," rather than more accurate headings. First, it should come as no surprise to attorneys practicing in this area that the Journal is wont to err in its summary coverage of actions taken by this and other courts. See, e.g., Nakhleh v. Chemical Construction Corp., 366 F. Supp. 1221 (S.D.N.Y. 1973). Second, counsel knew of the November, 1976 Journal entry and, therefore, must have known from experience that some action had been taken in the consolidated action during the month of November.

Counsel also should not have been misled by the Journal's use of the caption "Alosio v. Iranian Shipping Lines, S.A.," rather than the caption "Iranian Shipping Lines, S.A. v. Moraites." Once the two actions were consolidated by the Honorable Charles L. Bricant, Jr., United States District Judge, in December of 1973, counsel had a duty to inform himself of the court's actions whichever caption was employed. And, since counsel obviously knew of Judge Bricant's decision, ignorance of the September 1976 order — even if established — would afford no

The court therefore turns to Iranian's contention that its motion should be granted based upon the failure of Arya Shipping Lines, S.A. ("Arya") to give two-days notice of the judgment's settlement. While Rule 14 of the General Rules for the United States District Court for the Southern District of New York requires such notice upon the submission of a proposed form of judgment "unless the court otherwise directs," that rule may not operate in conflict with the provisions of the Federal Rules of Civil Procedure. Rule 83, Fed. R. Civ. P. Accordingly, Rule 58 of the Federal Rules of Civil Procedure, which governs the entry of judgments, is controlling.

As amended, Rule 58 restricts the submission of forms of judgment by attorneys to exceptional cases in which the court so directs. In other instances, responsibility for the preparation and entry of an acceptable judgment lies with the Clerk. This allocation of responsibility was made in order to "encourage all reasonable speed in formulating and entering the judgment when the case has been decided," and to avoid delay caused by the participation of interested attorneys. Notes of the Advisory Committee on Rules, 1963 Amendment to Rule 58, Federal Rules of Civil Procedure.

In the instant action, counsel for Arya submitted a form of judgment to the Clerk at the Clerk's express direction. Since this undoubtedly expedited approval and entry of the judgment, it certainly complies with the spirit, if not the letter, of Rule 58. Moreover, since it resulted from a direction of the Clerk, it probably does not come within the general proscription of attorney-supplied forms of judgment under Rule 58 and, therefore, the correlative requirement of notice under Rule 14.⁶ In any event, the failure to provide notice of settlement provides, at best, only a basis for appeal from the judgment entered by the Clerk; it does not

excuse counsel's failure to keep apprised of the consolidated action's progress in view of counsel's admitted knowledge of the November Journal notice.

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Finally, counsel observes that various notices sent during and after the time interval when the memorandum decision and judgment were entered served to mislead him. However, Iranian remained a party defendant and therefore was entitled to receive notice of motions and other docket entries. Neither the Clerk nor any of the parties had any reason or duty to refer to the motion to dismiss the cross-claim or its disposition in giving such notice. Moreover, notwithstanding counsel's protestations, any mistaken impression which he may have gained cannot be said to arise from justified reliance upon erroneous rulings of this court. Thompson v. Immigration and Naturalization Service, 375 U.S. 384 (1964), and Harris Trucklines, Inc. v. Cherry Meat Packers, Inc., 371 U.S. 215 (1962), are therefore inapposite.

The court has reviewed Iranian's claims in detail merely to demonstrate that counsel failed to meet the most basic of obligations imposed upon attorneys bringing claims before the court, namely that they take measures to keep informed of their case's progress. However the issue before the court is not whether counsel's neglect may be justified, but rather whether it may be excused. Although the court has serious reservations, disposition of the cross-claim on the merits is clearly preferable to termination of it by procedural default. Accordingly the court finds that counsel's neglect, though extreme, was excusable within the meaning of Rule 4(a). In making this determination, the court is influenced by the degree of liberality shown by other courts. See, e.g., Conway v. Pennsylvania Greyhound Lines, Inc., 243 F.2d 39 (D.C. Cir. 1957); Resnick v. Lehigh Valley R. Co., 11 F.R.D. 76 (S.D.N.Y. 1951). Iranian's motion will therefore be

granted and the cross-motion to strike the notice of appeal from the record will be denied.

Since counsel is likely to prosecute his appeal upon receipt of this decision, one further issue needs to be considered at this time. In its judgment dismissing the cross-claim, the court included a certification, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that "there [was] no just reason for delay of entry of this judgment" and therefore by implication found that there was no reason to delay an appeal from the judgment. However, neither the court's decision nor its judgment set forth the basis for such certification, a practice recently criticized by the Court of Appeals in Arlinghaus v. Ritenour, 543 F.2d 461, 463-64 (2d Cir. 1976). Accordingly, the court will now set forth a "brief reasoned statement," Gumer v. Shearson, Hammill & Co., Inc., 516 F.2d 283, 286 (2d Cir. 1974), explaining the basis for its decision to certify an immediate appeal from only one of the several claims involved in the instant action.

There were, in fact, three such reasons. First, some of the claims in this action have been pending before various judges of this court for more than a decade. Even those claims of more recent vintage are among the oldest ones presently pending. Thus, speedy trial and final disposition of all outstanding issues among the parties is clearly desirable. However, holding the any appeal from the court's judgment on the cross-claim in abeyance until all remaining claims are reduced to final judgment would raise the specter of a second jury trial should the court's decision subsequently meet with reversal. And, while a second trial would involve distinct legal issues, since the cross-claim and the original action arise out of a common nucleus of facts much evidence would be needlessly reintroduced. Certification will prevent such a waste of scarce judicial resources. Hobart v. Sohio Petroleum Co., 255 F. Supp. 972, 980 (N.D. Miss. 1966).

Second, on appeal, the Circuit Court will be presented with a simple 397a
issue of law, albeit Iranian law, readily capable of determination upon the record
below. Trial of the remaining claims will not sharpen the issues pertaining to this
court's decision on the cross-claim, nor will it obviate the need to eventually reach
and resolve the questions presented therein.

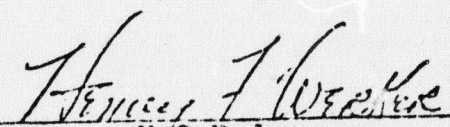
Finally, factual questions of considerable complexity will be
presented at trial. Dismissal of the cross-claim, if affirmed, will ease the heavy
burden imposed upon the triers of fact by removing questions of antitrust law from
consideration.

These factors outweigh the established federal policy against
piecemeal appeals since the court's decision to incorporate a Rule 54(b)
certification in the judgment will limit the evidence, narrow the issues, and save
much of the expense associated with trial, thereby helping to bring this action to a
close at the earliest possible date. Combined Bronx Amusements, Inc. v. Warner
Bros. Pictures, 132 F. Supp. 921, 922 (S.D.N.Y. 1955).

For the reasons stated earlier, Iranian's motion is granted and the
cross-motion is denied. The Clerk is urged to take special care to notify counsel
promptly of this decision's entry.

SO ORDERED.

DATED: New York, New York
April 5, 1977



U.S. D. J.

NOTES

1. The court held that Iranian had been dissolved under controlling provisions of the Commercial Code of Iran of 1932. It also found that Spanos could not proceed as either a corporate liquidator or Iranian's managing director.

2. Rule 77(d) provides as follows:

Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure.

3. In consolidating the two actions, Judge Bricant ordered, inter alia, that "the action numbered 67 Civ. 9 [be] discontinued without prejudice to all actions and proceedings heretofore had therein." Since consolidated actions retain their separate identities, Garber v. Randell, 477 F.2d 711, 715 (2d Cir. 1973), and require separate judgments, 9 C. Wright & A. Miller, Federal Practice and Procedure § 2382, the September, 1976 order served to delete this aspect of Judge Bricant's order.
4. Appeal from the memorandum decision itself was never possible since it was not a final order within the meaning of Rule 54(b), Fed. R. Civ. P. Even if it were, since more than 60 days had passed since its entry, Rule 4(a) provided no basis for relief from the failure to appeal in time. In re Morrow, supra, 502 F.2d at 521.
5. The court notes with interest that counsel for Iranian employed the caption "Rudolph V. Alosio v. Iranian Shipping Lines, S.A., etc." 72 Civ. 1392 (HFW) on the cover of his memorandum in support of Iranian's motion.
6. Since the Clerk initiated the request and adopted the form of judgment as his own, the court rejects counsel's argument that questions under the ABA Canons of Judicial Ethics are also presented here.

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